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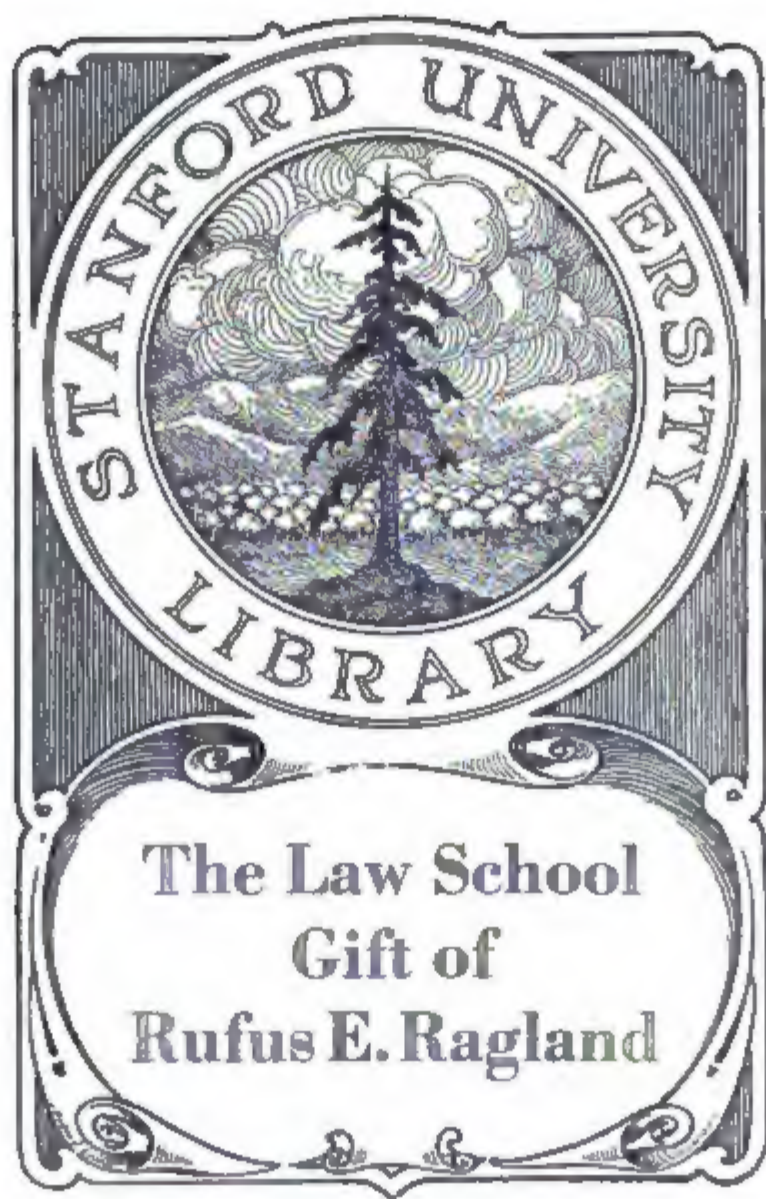
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The Statutory and Case Law
APPLICABLE TO
PRIVATE COMPANIES

WITH SPECIAL REFERENCE TO
THE GENERAL CORPORATION ACT OF
NEW JERSEY
AND
Corporation Forms and Precedents

APPLICABLE TO
Corporations Generally

BY
JAMES B. DILL

FIFTH EDITION

REVISED AND ENLARGED BY
FRANK WHITE AND FRANK C. McKINNEY



NEW YORK AND ROCHESTER, N. Y.
THE LAWYERS' CO-OPERATIVE PUBLISHING CO.

1911

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PREFACE TO FIFTH EDITION.

The first edition of Dill on New Jersey Corporations appeared in 1898. This little volume was devoted primarily to a statement of the corporation laws of New Jersey with notes of the leading decisions, but it formed a basis for the larger editions of 1899 and 1901, in which the author devoted more space to forms and precedents.

In 1902, the fourth edition appeared. Not only were the notes of decisions extended, but the number of forms and precedents was greatly increased in accordance with the opinion of Mr. Dill that this feature of the book was entitled to more elaboration than had previously been accorded.

Except for pamphlet editions of the statute and case law, supplemented by a few forms, which have been issued from time to time, there has been no revision of the larger volume since 1902, and that edition has long since been exhausted. The changes in the corporation laws of New Jersey and the numerous important decisions rendered by the courts during the past ten years, have made the publication of a new edition imperative.

The preparation of the fifth edition was well under way when the labors of Judge James B. Dill were terminated by his sudden death in December, 1910, which necessitated the completion of the work by others.

In the re-writing of the book the statute law has been brought down to date of issuance. It may also be

noted that great care has been exercised in amplifying the number of practical forms and in digesting the numerous opinions handed down by the courts from the publication of the first edition to the present time. Cross references to the New York decisions have been made wherever deemed applicable to New Jersey statutes. It is thought that the index, prepared by the senior editor, will enable those using the book to find readily everything contained therein.

The editors hope that the revision and enlargement of this important work will add to its value and make it a ready and serviceable aid to those who are dealing with corporation matters.

FRANK WHITE.

FRANK C. MCKINNEY.

New York, October, 1911.

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“G. S.” refers to the General Statutes of New Jersey, edition 1896.

CONSTITUTION OF STATE OF NEW JERSEY

AS AMENDED IN 1875.

PROVISIONS RESPECTING CORPORATIONS.

ARTICLE I.

19. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

20. No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever.

ARTICLE IV.

SECTION VII.

3. The legislature shall not pass any * * * law impairing the obligation of contracts or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

8. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

11. The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say: * * * Granting to any corporation, association or individual, any exclusive privilege, immunity or franchise whatever. Granting to any corporation, association or individual the right to lay down railroad tracks. * * * The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

An act, general in form, but the particularity of the descriptive language in which showed that its framer was providing for a particular corporation, was held to be unconstitutional, as being a special act, as having a misleading title, and as being inimical to the provision of the constitution that "the legislature shall pass no special act conferring corporate powers." *Grey v. Newark Plank Road Co.*, 65 N. J. Law, 603.

ARTICLE X.

1. All * * * claims and rights of individuals and bodies corporate, and of the state, and all charters of incorporation shall continue.

THE GENERAL CORPORATION LAW OF NEW JERSEY.

LAWS OF 1896, CHAPTER 185.

Being "An Act Concerning Corporations (Revision of 1896)," including the amendments and supplements to the end of the legislative session of 1911.

I.—Powers.

1. Every corporation shall have power:

I. To have succession, by its corporate name, for the period limited in its charter or certificate of incorporation, and when no period is limited, perpetually;

II. To sue and be sued in any court of law or equity;

III. To make and use a common seal, and alter the same at pleasure;

IV. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, and all other real estate which shall have been *bona fide* conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained

for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest;

V. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation;

VI. To make by-laws fixing and altering the number of its directors, and providing for the management of its property, the regulation and government of its affairs, and the transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars;

VII. To wind up and dissolve itself, or be wound up and dissolved in manner hereafter mentioned.

P. L. 1846, p. 16; P. L. 1846, p. 65; P. L. 1849, p. 301; P. L. 1872, p. 77; Act. of 1875, § 1.

I. To have succession.

The Corporation Act of 1875 limited corporate existence to fifty years. Companies formed under the Act of 1875 may now have the period of their corporate existence extended or made perpetual by complying with the provisions of Section 27.

As to corporate name, see notes, Section 8.

II. To sue, etc.

The power to sue and be sued implies also the power to compromise suits. *Ellerman v. Chicago Junc. Rys. &c. Co.*, 49 N. J. Eq., 217.

Corporations, like natural persons, are entitled to all the remedies against their trustees for breach of trust. *Bigelow v. Old Dominion Copper Co.*, 71 Atl. Rep., 153.

In a suit where a corporation is the party, the officers and members are not parties to the action and are competent witnesses, both at common law and under statute. *Assurance Association v. Cole*, 26 N. J. Law, 362.

It is not necessary for a corporation plaintiff to allege its incorporation. *German R. Church v. Von Puechelstein*, 27 N. J. Eq., 30.

If the defendant fails to interpose the plea of *nul tiel corpora-*

tion in the court below, he waives the objection. *Rumsey v. N. Y. & N. J. Tel. Co.*, 49 N. J. Law, 322.

Where a defendant corporation files a plea of general issue, it admits the corporate existence and the question is not in issue. *Bennett v. Millville Improvement Co.*, 67 N. J. Law, 320.

A corporation may be sued at the same time in more than one jurisdiction. The doctrine of *Douglas v. The Insurance Company* 138 N. Y., 209, repudiated. *National Fire Ins. Co. v. Chambers*, 53 N. J. Eq., 468.

Suit by a stockholder in behalf of corporation.

Individual stockholders are not the proper parties to sue or defend on behalf of corporate interests without the consent of a legal majority of the stockholders. *Silk Mfg. Co. v. Campbell*, 27 N. J. Law, 539. But transferees of stock, on grounds of public policy, are entitled to sue the promoters, on behalf of the corporation, for a secret profit of the promoters. The principle that a corporation cannot complain of a transaction to which all of its stockholders assented is inapplicable unless the assent was that of the real party in interest. See *Arnold v. Searing*, 67 Atl. Rep., 831.

A stockholder may sue in equity in his own name to enforce a right of the corporation, without first requesting the directors to sue, when it is made to appear that if such request had been made it would have been refused, or, if granted, that the litigation following would necessarily be subject to the control of persons opposed to its success. *Knoop v. Bohmrich*, 49 N. J. Eq., 82; *aff'd* 50 Id., 485; *Ackerman v. Halsey*, 37 N. J. Eq., 356; *aff'd* 38 Id., 501. See *Groel v. United Electric Co. of N. J.*, 70 N. J. Eq., 616; *Stephany v. Marsden*, 71 Atl. Rep., 598. *Siegman v. Maloney*, 65 N. J. Eq., 372. *Columbia etc. Dredging Co. v. Washed Bar Dredging Co.*, 136 Fed. Rep., 710.

If it appears that the litigation would be subject to the control of hostile persons, this fact is sufficient to warrant suit by a stockholder. *Barry v. Moeller*, 68 N. J. Eq., 483.

The right of a stockholder to sue extends to cases where directors have voted themselves excessive salaries. *Lillard v. Oil, Paint & Drug Co.*, 70 N. J. Eq., 197.

Stockholders may agree among themselves to aid the company in proper ways in litigation against third parties. *Bigelow v. Old Dominion Copper Co.*, 71 Atl. Rep., 153.

A court of equity will interfere on behalf of a stockholder and grant an injunction if he can show that the corporation is using its power for purposes not within the scope of its powers. *Gifford v. N. J. Ry. Co.*, 10 N. J. Eq., 171.

A stockholder may sue for a distribution of assets to the exclusion of stockholders who hold stock fraudulently issued to them with-

out requesting the receiver to sue, because in such a case the stockholder is enforcing a personal right and not a right in favor of the corporation. *Weber v. Nichols*, 75 Atl. Rep., 997.

A bill by a stockholder of a foreign corporation will lie against the corporation and others, where it could have sued as complainant in its own name, is a necessary party to the suit, and is made defendant only because controlled by the officers and directors, whose dealings with its assets are questioned by the bill. *Wilson v. Amer. Palace Car Co.*, 54 Atl. Rep., 415.

Suit barred by Laches.

A suit by a stockholder in behalf of the corporation to cancel stock fraudulently issued may be barred by laches if the facts were known by the stockholder at the time of the transaction. *Stephany v. Marsden*, 75 Atl. Rep., 899.

Stockholders are not guilty of laches unless there has been unreasonable delay in bringing suit after knowledge of the facts. In holding directors to an accounting for illegal profits, stockholders may recover for at least the six-year period of statutory limitation. *Barry v. Moeller*, 68 N. J. Eq., 483.

Parties.

In a suit by a stockholder the corporation is a necessary party defendant. *Barry v. Moeller*, 68 N. J., 483.

A stockholder of a bankrupt corporation, who sues to enjoin the reorganization of the company on the ground that the securities and stock to be issued for the property to be taken over by the new corporation exceed the value of the property, must bring in all the parties in order that the court may enter a decree binding all. *Schuler v. Southern Iron & Steel Co.*, 75 Atl. Rep., 552.

Under a bill filed by a stockholder and creditor against directors for losses, a decree cannot be made for the sole benefit of the complainant. *Landis v. Sea Isle Hotel Co.*, 53 N. J. Eq., 654.

As to liability for torts, see Section 70.

Implied contract.

A corporation may be sued on an implied contract. *Worrell v. First Pres. Church*, 23 N. J. Eq., 96, and cases cited. See also *Mendham v. Losey*, 2 N. J. Law, 327; *Baptist Church v. Mulford*, 8 N. J. Law, 182.

Mandamus.

The power to compel a corporation to perform its duty ordinarily lies in the Supreme Court through its writ of mandamus. *Mayor, &c., v. Erie R. R. Co.*, 71 Atl. Rep., 620.

III. Common seal.

The general rule is that a corporation need use its seal only in cases where it would be essential for an individual to use a seal. The old common law idea that a corporation can only act under its corporate seal no longer prevails. *Crawford v. Longstreet*, 43 N. J. Law, 325; see also *Bap. Church v. Mulford*, 8 N. J. Law, 182; *Mendham v. Losey*, 2 N. J. Law, 327.

It is not necessary to use wax or wafer. An impression of the seal on the paper is sufficient. P. L. 1875, p. 56; P. L. 1898, p. 677, § 20. See *Corrigan v. Trenton Del. Falls Co.*, 5 N. J. Eq., 52.

Although the appearance of the seal is evidence of the assent of the corporation, it is not conclusive. It may be shown that the seal was affixed without authority. *Leggett v. The N. J. Mfg. & Banking Co.*, 1 N. J. Eq., 541; *Manhattan Mfg. Co. v. N. J. Stock Yard Co.*, 23 N. J. Eq., 161; *Parker v. Washoe Mfg. Co.*, 49 N. J. Law, 465; *Whitehead v. Hamilton Rubber Co.*, 52 N. J. Eq., 78.

But the corporate seal requires evidence to substantiate its character. *Den v. Vreelandt*, 7 N. J. Law, 352; *Vaughn v. Hankinson's Admr.*, 35 N. J. Law, 79.

The forgery of a corporate seal is a crime under section 197 of the Crimes act. (P. L. 1898, p. 848.) *United States v. Andem*, 158 Fed. Rep., 996.

No presumption of authority arises from the use of a common paper seal not on its face appearing to be the corporate seal, although accompanied by the recitation "witness the corporate seal." *Raub v. Blairstown Creamery Ass'n*, 56 N. J. Law, 262. There are two essential elements in the proof of a corporate deed—that the seal is the seal of the company; that it was affixed by authority. *Osborne v. Tunis*, 25 N. J. Law, 633. The corporate seal affixed to an assignment by the president of a corporation is sometimes considered prima facie evidence of corporate authority. *Kirkpatrick v. Eastern Milling & Export Co.*, 135 Fed. Rep., 144. But see, contra, *Morawetz on Private Corporations*, §§ 340, 617.

IV. Power to hold real estate.

This section is a practical re-enactment of a similar provision of the statute of 1846.

The practical point under this section of the statute is that it rests with the state, and with the state alone, to question the power of a corporation to hold real estate. *State v. Mansfield*, 23 N. J. Law, 510. See also *Am. Dock & Imp. Co. v. Trustee, &c.*, 39 N. J. Eq., 409; *Northeastern Telephone & Telegraph Co. v. Hepburn*, 72 N. J. Eq., 7. Except, perhaps, the case of a devise to a corporation of lands in excess of the amount expressly limited in the charter, where the court allowed the question to be raised by an

heir-at-law by a suit in chancery. *DeCamp v. Dobbins*, 29 N. J. Eq., 36; *aff'd* 31 Id., 671.

Under the Act of 1875, a corporation was not authorized to hold real property "exceeding the amount limited in its charter," but all such limitations, expressed or implied, were removed in the Revision of 1896.

The English statutes of mortmain have never been in force in this state. *State v. Mansfield*, 23 N. J. Law, 510; *State v. Newark*, 25 N. J. Law, 315.

A corporation may hold title to lands in fee simple, even though the period of the corporation's existence is limited. *State v. Brown*, 27 N. J. Law, 13; *State v. Haight*, 35 N. J. Law, 178; *aff'd* 36 Id., 471. See also *Barnert v. Johnson*, 15 N. J. Eq., 481.

As to power to grant easements, see *Benton v. City of Elizabeth*, 61 N. J. Law, 411; *aff'd* Id., 693.

See *Freeman v. Sea View Hotel Co.*, 57 N. J. Eq., 68.

Mortgages on real estate.

There is no prescribed statutory procedure for the creation of mortgages by corporations organized under this Act. No consent of stockholders is required as in New York. While the power to create mortgages is undoubtedly vested in the directors (Section 12), it is the usual practice, in the absence of express authority to the directors in the certificate of incorporation, to obtain the sanction of the stockholders at a duly convened meeting.

When, for the safety and advancement of a company, a mortgage has been executed in good faith, the receivers may not question its validity. *Leggett v. The N. J. Mfg. & Banking Co.*, 1 N. J. Eq., 541.

The extent of a mortgage on all the property, real or personal, now owned or hereafter acquired, must be ascertained from an examination of the various clauses in the mortgage concerning after-acquired properties. *Guaranty Trust Co. v. Atlantic Coast Electric Ry. Co.*, 132 Fed. Rep., 68.

Although a mortgage may not have been duly authorized by a resolution of the board of directors, the fact that it appears on its face to have been executed in accordance with legal requirements is sufficient to estop the company from claiming its invalidity, at least to the extent of money actually advanced by the mortgagee. *Miller v. Gourley*, 65 N. J. Eq., 237.

A mortgage on all real and personal property that may thereafter be acquired extends to such property whether the title acquired be legal or equitable. *Tilford v. Atlantic Match Co.*, 134 Fed. Rep., 924; *Central Trust Co. v. Kneeland*, 138 U. S., 419.

As to the effect of such a mortgage on property held under a

conditional sale, see *Tilford v. Atlantic Match Co.*, 134 Fed. Rep., 924.

An assignee of a mortgage takes it subject to all the defences to the bond secured thereby. *Voorhees v. Nixon*, 72 N. J. Eq., 791; *aff'd* 69 Atl. Rep., 643.

The power of a corporation to issue bonds secured by mortgage does not prohibit the corporation from issuing a mortgage in the common form to secure a debt. *Brown v. Citizens' Ice & Cold Storage Co.*, 72 N. J. Eq., 437.

When a mortgage is duly executed and recorded before judgment obtained by a creditor, and the corporation had the full benefit of the bonds, the fact that the directors held the meeting at which the mortgage was authorized in another state does not render the mortgage void. *Schultze v. Van Doren*, 64 N. J. Eq., 465; *aff'd* 65 Id., 764.

As to the right of one who has received a mortgage of the corporation in part payment for his stock, which is all the stock of the corporation, excepting two shares, to question the mortgage, see *Hess v. Reich*, 78 N. J. Law, 645.

The president, though the active manager of corporate affairs, may not mortgage the property without the concurrence of the directors. *Bennett v. Keen*, 59 N. J. Eq., 634.

Subsequent ratification by the directors in contemplation of insolvency does not give the mortgage validity. *Id.*

A resolution by the board of directors is not necessary to the execution of a valid mortgage when the stockholders, at a meeting called by the board, authorized the mortgage. *Reed v. Helois Carbide Co.*, 64 N. J. Eq., 231.

Chattel mortgage.

A chattel mortgage may be made a lien on the outstanding book accounts due to a mortgagor and upon such book accounts as thereafter may become due in the regular course of business. *Buvinger v. Evening Union Printing Co.*, 72 N. J. Eq., 321. See also *Nugent v. McNeil Shoe Co.*, 62 N. J. Eq., 583.

As to the lien of a chattel mortgage, see *Fidelity Trust Co. v. Staten Island Clay Co.*, 70 N. J. Eq., 550.

As to the power of the vice-president of a corporation mortgagee to execute the statutory affidavit to be annexed to a mortgage covering personal property, see *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721; 16 L. R. A. (N. S.), 703, and cases cited.

As to the effect of an unrecorded chattel mortgage and the operation of such a mortgage covering all property in possession and to be acquired, when a corporation buys the mortgaged property

subject to the mortgage, see *Fidelity Trust Co. v. Staten Island Clay Co.*, 70 N. J. Eq., 550.

A chattel mortgage by a corporation, authorized by de facto stockholders only, is good as to third persons. *Kane v. Lodor*, 56 N. J. Eq., 268.

As to the rights of corporation creditors where the owner of the chattels sells them to the corporation and later mortgages the same, falsely representing that he is owner, see *Ott v. Sutcliff*, 60 Atl. Rep., 965.

A chattel mortgage is good as against the receiver without registry or affidavit. *Kane v. Lodor*, 56 N. J. Eq., 268.

A chattel mortgage may be made a lien on book accounts due and to become due. *Buvinger v. Evening Union Printing Co.*, 72 N. J. Eq., 321. See also *Nugent v. McNeil Shoe Co.*, 62 N. J. Eq., 583, 585.

Prima facie a mortgage executed under the seal of the company and signed by the vice-president is valid, and when it is attacked because of lack of authorization by the board of directors, the burden is upon the company to show clearly that the seal was affixed without authority of the board. And where the corporation has received the entire consideration of such a mortgage, it cannot dispute the validity of the mortgage because of absence of proof of formal resolution of the directors. *Earle v. National Metallurgic Co.*, 76 Atl. Rep., 555.

When a corporation is the holder of a mortgage, the required affidavit may be made in its behalf by an officer thereof acting under authority of the corporation and possessed of the requisite knowledge to make such affidavit. An affidavit made by an administrative officer or by a duly authorized agent or attorney is the act of the corporation itself. *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721.

An affidavit by the vice-president is therefore the affidavit of the corporation and valid without allegation of specific authority. *Id.*

Foreclosure.

In a suit by the trustee to foreclose a corporate mortgage, when the bondholders are not parties, the court has no power to make them parties for the purpose of litigating questions regarding compromise of claims and reorganization of the company. *Land Title & Trust Co. v. Asphalt Co. of America*, 121 Fed. Rep., 587.

The right of a trustee for mortgage bondholders to foreclose is not affected by the fact that the corporation has power to make calls on unpaid stock. *Land Title & Trust Co. v. Asphalt Co. of America*, 127 Fed. Rep., 1; *Land Title & Trust Co. v. Tatnall*, 132 Fed. Rep., 305.

Claims between bondholders are not properly litigated in a suit

to foreclose. *Mercantile Trust Co. v. U. S. Shipbuilding Co.*, 130 Fed. Rep., 725.

The right of foreclosure may be exercised by a bondholder although the mortgage provides for suit by the trustee. The power of the trustee to foreclose is not exclusive. *Schultze v. Van Doren*, 64 N. J. Eq., 465; *aff'd* 65 Id., 764; *McFadden v. Railroad Co.*, 49 N. J. Eq., 176; *Railroad Co. v. Fosdick*, 106 U. S., 47, 68.

Although cestui que trust are necessary parties in suits to foreclose, it cannot be maintained that they are necessary in the sense that they are indispensable and that their absence would invalidate the decree. *Ring v. New Auditorium Pier Co.*, 77 Atl. Rep., 1054.

It has been held that a trustee may foreclose without making any of the bondholders defendants where the parties would be numerous. *Hackensack Water Co. v. Dekay*, 36 N. J. Eq., 552; *N. J. Franklinites Co. v. Ames*, 12 N. J. Eq., 507; *Bushey v. National State Bank of Camden*, 72 N. J. Eq., 466.

A complainant who asks that a sale under foreclosure proceedings be set aside, even if he has a right to such an action in equity, must apply promptly after the sale. A notice by the trustee that he was about to foreclose, and unnecessary delay after he has been notified that the sale has taken place with the result that it is impossible to restore the affairs of the company, will bar his right to any relief.

Bonds.

There is no statutory limitation on the power of a corporation organized under this Act to issue bonds or debentures, whether secured by mortgage or otherwise.

Stockholders owing money to the corporation upon their subscriptions for stock have the right to buy and pay for the company's bonds, and either hold them or pass them upon the market. *Bergen v. Porpoise Fishing Co.*, 42 N. J. Eq., 397.

The lien of the holders of mortgage bonds relates to the time when the mortgage was recorded, and is superior to a mechanic's lien, although the bonds themselves were not issued until after the erection of the building had been commenced. *Central Trust Co. v. Continental Iron Works*, 51 N. J. Eq., 605.

One who has accepted bonds of a corporation and sold them, and has afterward bought all the company's property at a receiver's sale, subject to all encumbrances, is estopped to deny the validity of the bonds. *De Kay v. Voorhis*, 36 N. J. Eq., 37; *aff'd* Id., 548.

Coupon bonds are negotiable securities. *Boyd v. Kennedy*, 38 N. J. Law, 146; *Copper v. Jersey City*, 44 N. J. Law, 634.

As to the distinction between current corporate bonds and bonds

that are overdue, as affecting the rights of holders thereof, see *Midland R. R. Co. v. Hitchcock*, 37 N. J. Eq., 549.

As to the power of one corporation to guarantee the bonds of another corporation, see *Ellerman v. Chicago Junction Rys. &c. Co.*, 49 N. J. Eq., 217—247.

Where a new corporation is formed to take over the property of a corporation which has issued bonds, and where the new corporation is to issue bonds guaranteed by another company, the rights of a bondholder of the old company on foreclosure are discussed in *Ring v. New Auditorium Pier Co.*, 77 Atl. Rep., 1054.

Validity of bonds informally issued.

A corporation having authority to execute bonds, and its proper officers having actually executed and delivered them, and it having received, retained and used the consideration for the bonds, and paid interest on the bonds for years, omission of a formal resolution authorizing their execution is no defence thereto. *Pomeroy v. N. Y. Smelting & Refining Co.*, 48 Atl. Rep., 395.

Implied authority to issue bonds.

Express authority given by the stockholders and directors of a corporation to prepare and execute mortgages for the purpose of borrowing money gives an implied authority to prepare and execute bonds for payment of the money as one of the usual evidences of a loan, and execution of the mortgages, reciting the bonds, ratifies them. *Pomeroy v. N. Y. Smelting & Refining Co.*, 48 Atl. Rep., 395.

A corporation is estopped to deny the validity of its bonds when they are issued to innocent holders and no defect appears upon the face of the mortgage which secured them, and when there is nothing to put an investor on inquiry as to any irregularity. It cannot set up the defence of no resolution of the board of directors authorizing the bonds. *Schultze v. Van Doren*, 64 N. J. Eq., 465; *aff'd* 65 Id., 764.

Presentation of coupons.

When a mortgage to secure the payment of the principal of certain bonds at a specified day and the interest thereon according to the provisions of coupons attached to the bonds, contains a covenant that at a fixed time after default in the payment of interest, and after demand, the principal shall become immediately due and the bonds and coupons are payable at a designated place, default in the payment of interest within the meaning of that covenant will result from the non-payment of the coupons, although not presented at the designated place and payment demanded. *Security Trust & Safe Deposit Co. v. N. J. Paper Board & Wall Paper Mfg. Co.*, 57 N. J. Eq., 603.

Consideration.

The mere fact that property bought for \$17,000 at sheriff's sale, on execution against a corporation, was resold to the reorganized corporation for \$38,000, is not proof of fraudulent overvaluation, so as to affect the validity, as against the receiver of the latter corporation, of its bonds given on account of the transaction. *Pomeroy v. N. Y. Smelting & Refining Co.*, 48 Atl. Rep., 395.

Bonds secured by unrecorded chattel mortgage valid.

Even if, under statutes making certain chattel mortgages void as against creditors, admissions therein as to indebtedness be not admissible against the creditors, the indebtedness, as an unpreferred claim, may be shown by the bonds attempted to be secured. *Pomeroy v. N. Y. Smelting & Refining Co.*, 48 Atl. Rep., 395.

Rights of a Bondholder.

Equity will grant relief to a bondholder where the trustee under a corporate mortgage and other bondholders conspired to defraud him of his rights under the mortgage by having it foreclosed without notice to him and without making him a party, under a scheme to buy in the property on foreclosure sale and to issue new bonds. But where a bondholder is advised of his rights and is given the option along with the other bondholders, no equity will exist in his favor as against them. *Ring v. New Auditorium Pier Co.*, 77 Atl. Rep., 1054.

Holders of bonds secured by a pledge of stock are entitled to have the stock continued in existence as security unless they have consented that other security may be substituted. *Ikelheimer v. Consolidated Tobacco Co.*, 59 Atl. Rep., 363.

Where, by the terms of a mortgage, coupons have preference over the bonds to which they are attached, a party who advances money to the corporation to pay interest coupons and who receives the coupons in return for the advances, does not succeed to the interest of the bondholder in the coupons unless the bondholder understood or had reason to inquire that the party was buying the coupons and that the corporation was not paying for them. And where the coupons are taken up by the corporation which issued them, it is a question of fact whether or not there was a sale of the coupons to the persons who advanced money to take them up. *Morton Trust Co. v. Home Telephone Co.*, 66 N. J. Eq., 106.

It was understood between the corporation and defendant that he should have a prior lien for moneys advanced, and a bond was drawn payable at a later date, but with the understanding that it could be entered at any time in order to secure defendant's claim as against any threatening creditors. Held, that upon ascertaining that the bond could not be entered at any time, the officers could execute new bonds expressive of the understanding without authorization of the directors. *Bergen v. Rogers*, 67 Atl. Rep., 290.

When corporate bonds have passed into the hands of innocent holders for what the corporation said they represented, it is too late for the corporation to complain if the company overvalued its own stock and put the bonds in circulation therefor. *Hoskins v. Seaside Ice Mfg. Co.*, 68 N. J. Eq., 476.

The fact that bonds are taken as collateral security for an existing debt does not make the holder any less a bona fide holder for value. *Id.*

A receiver had been appointed. An agreement was made to give each creditor four time notes. The receiver was discharged. Two of the creditors received no notes. Payment of the first series of the notes was defaulted. It was then proposed to issue corporate bonds and take up the notes. A majority of the creditors accepted, and bonds were issued to them, some retaining their notes and others being paid in cash. Held, that the creditors who took bonds issued to take up the notes were not bona fide holders. *Skirm et al. v. Eastern Rubber Mfg. Co.*, 57 N. J. Eq., 179. See also *Bank v. Sprague*, 21 N. J. Eq., 530; *Sewell v. R. R. Co.*, 9 Atl. Rep., 785.

One who advances money to a corporation to pay coupons on its bonds and who takes the coupons when they come in is not a purchaser of the coupons entitled to the preferences provided in the bond. *Morton Trust Co. v. Home Telephone Co.*, 66 N. J. Eq., 106.

Although a mortgage provides that suit shall be brought by the trustee, bondholders are entitled to sue in their own names where the trustee declines. *Schultze v. Van Doren*, 64 N. J. Eq., 465; *aff'd* 65 *Id.*, 764.

No statutory limitation as to amount of mortgage indebtedness.

The question is frequently asked whether there is any limitation under the laws of New Jersey on the amount of bonds or other indebtedness which a corporation may create. As to ordinary business corporations the statutes are silent, although railroad companies are limited in the amount of such indebtedness. This question is doubtless suggested by the provisions of the laws of some of the other states limiting the amount of bonded indebtedness to the amount of the paid-up capital stock. The general rule is stated in *Barry v. Merchants' Exchange Co.*, 1 Sanford Ch. Rep. (N. Y.), 280, 310, where it was said:

"It is in vain to look in our laws for any express restriction of corporations to the amount of their capital in the use of their credit. The history of those institutions in this country shows that no such restriction exists. The Legislature has sometimes interposed its authority by expressly limiting the use of the corporate credit, thus showing that unless so restricted it was unlimited."

V. To appoint and compensate agents.

The power to appoint officers and agents is ordinarily in the directors, but it may be delegated. It is not necessary that the ap-

pointment of an agent should be made under the corporate seal. *Mendham v. Losey*, 2 N. J. Law, 327.

The manner of appointing agents is usually prescribed by the by-laws.

A trading or manufacturing corporation, until its charter is annulled by a proper proceeding at law, has the same authority as an individual trader or manufacturer to sell or consign goods, to select selling agents, and to impose conditions as to whom and the terms upon which they shall sell. *Stockton v. American Tobacco Company*, 55 N. J. Eq., 352; *aff'd* 56 Id., 847.

The fact that an incorporator of a company has received stock in payment for his services in promoting the company does not preclude a recovery for services rendered later as an employé. *Wiltbank v. Automatic Amusement Co.*, 69 N. J. Law, 236.

As to the issuing of bonus stock by directors for services, and influence of one or more of their number in promoting a corporation, see *Central Consumers' Wine & Liquor Co. v. Madden*, 68 Atl. Rep., 777.

When the duties of an officer decrease, it is expected that directors will reduce future salary. The question of reasonable value may be submitted to a jury. *Metropolitan Rubber Co. v. Place*, 147 Fed. Rep., 90.

One of two persons engaged in the organization of a business for the common welfare is not entitled to compensation. *Bailey v. Burgess*, 48 N. J. Eq., 411.

Salaries.

A court of equity has power to review the question of reasonableness of salaries for personal service of directors, although fixed by the stockholders. *Lillard v. Oil, Paint & Drug Co.*, 70 N. J. Eq., 197.

Where the salary of a director is fixed by the directors themselves, its reasonableness is reviewable in equity at the instance of a dissenting stockholder. *Gardner v. Butler*, 30 N. J. Eq., 712; *Laurel Springs Co. v. Fougerey*, 50 N. J. Eq., 756, 759.

Officers receiving excessive salaries are liable to the receiver of the corporation for the amount of the excess. *Mills v. Hendershot*, 70 N. J. Eq., 258.

See further as to officers, agents and de facto officers, notes to §13.

VI. By-laws.

As to where the power to make and alter by-laws lies, see Section 11.

By-laws are binding and confer rights upon members of the corporation but not upon third persons without notice. *State v. Overton*, 24 N. J. Law, 435, 440.

Where a by-law is adopted as a part of the original organization of the company, and the subscriptions for stock are made and money

paid thereon upon the strength thereof, it becomes a fundamental contract between the stockholders, and cannot afterwards be altered, even though a general power be reserved in the by-laws to make alterations therein. Rights under such a by-law are vested in the stockholders and pass to each new holder of stock by transfer. *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440.

For early cases declaratory of general principles relating to by-laws, see *Paxson v. Sweet*, 13 N. J. Law, 196; *Taylor v. Griswold*, 14 Id., 222; *State v. Overton*, *supra*.

VII. To wind up and dissolve.

See also Section 69. Generally speaking, aside from the inherent power of the state to forfeit a charter for misuser or nonuser, the statutes alone provide the means by which a private corporation may be dissolved, and any other method may be enjoined. *Hunt v. American Grocery Co.*, 81 Fed. Rep., 532. In *Hoboken Building Association v. Martin*, 13 N. J. Eq., 427, it was contended that a failure to elect officers according to the requirements of the constitution worked a dissolution. But the court held *contra*. This matter is now settled by statute. Section 41, *post*.

The charter of a company is not extinguished by a transfer of all its property. *Zinc Co. v. Franklinite Co.*, 13 N. J. Eq., 322; *Sewell v. East Cape May Beach Co.*, 50 N. J. Eq., 717.

The methods by which a corporation may be wound up and dissolved, provided by statute, are:

1. Limitation in the certificate of incorporation. The corporate existence is continued, however, for the purpose of settling up and closing the affairs of the company. Sec. 53.
2. Surrender of the corporate franchises. Sec. 32.
3. Voluntary dissolution by the directors and stockholders, or by unanimous consent of the stockholders. Sec. 31.
4. Legislation. Sec. 4.
5. Decree of the Court of Chancery in insolvency proceedings. Sec. 69.
6. The Court of Chancery or Supreme Court may declare charter of company forfeited for failure to obey order to bring books into the state. Sec. 44.
7. Proclamation of the Governor for failure to pay taxes. Sec. 156.

2. Powers additional.

In addition to the powers enumerated in the first section of this act and the powers specified in its charter or in the act or certificate under which it was in-

corporated, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or the act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

P. L. 1846, p. 16; Act of 1875, §§2, 3, 9. See P. L. 1899, p. 334.

This section is an important provision of the corporation law, involving the question as to what corporate powers are granted by the statutes of New Jersey.

In 1846 the act entitled "An Act concerning corporations," approved February 14, 1846 (P. L. 1846, p. 16), was passed, giving all corporations substantially the same general powers as are contained in paragraphs 1 to 5 of this act.

In the same year "An Act to authorize the establishment and prescribe the duties of manufacturing companies," approved February 25, 1846 (P. L. 1846, p. 64), was passed.

This was the first general enabling act of New Jersey. During the next three years recourse was had to the Legislature by way of special charters for specific powers and objects, until it became apparent from the multiplicity of special charters that an extension of the general enabling act (P. L. 1846, p. 64) was necessary so as to include corporations other than manufacturing. Accordingly in 1849 the general enabling act was broadened to include companies for manufacturing and other purposes by the passage of an act entitled "An Act to authorize the establishment, and to prescribe the duties of companies for manufacturing and other purposes," approved March 2, 1849 (P. L. 1849, p. 300).

The "Act concerning corporations," approved February 14, 1846 (P. L. 1846, p. 16), which prescribed the powers of corporations in general, remained practically unchanged down to the Revision of 1875.

Meanwhile the general enabling act of 1849 (P. L. 1849, p. 300) was supplemented by various acts of the Legislature from time to time.

In 1875 the Constitution of New Jersey, as then amended, provided that the "Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained."

In obedience to the provision of the Constitution the Corporation Act of 1875 was passed, and in that act the fundamental powers of corporations as defined under "An Act concerning corporations," approved February 14, 1846 (P. L. 1846, p. 16), were substantially reiterated.

The Revision of 1896 consolidated Sections 2 and 3 of the Act of 1875 into Section 2 of the Act of 1896.

Before proceeding to analyze this section it should be borne in mind that the act is applicable to domestic corporations generally, including (1) corporations under special charters granted by the Legislature, or under the general corporation act prior to 1875; (2) corporations created under general acts of the Legislature applicable to different classes of corporations, such as banking, insurance, etc., as well as (3) to corporations organized under the Act of 1875. Therefore, when the statute reads "in addition to the powers enumerated in the first section of this act and the powers specified in its 'charter'" it includes companies created by special charters granted by the Legislature prior to 1875.

At common law a corporation created by charter could do any act that an individual could do, whether expressly empowered by its charter to do such act or not. For an abuse of its powers it was amenable to the sovereign alone. *Riche v. Ashbury Co., L. R., 9 Exch., 224, 262.*

A corporation created by statute, however, is precisely what the organic act makes it. For every function it claims to exercise and for every power it assumes to possess it must find authority in legislative grant. *Watson v. Acquackanonck Water Co., 36 N. J. Law, 195; Stockton v. Central R. R. Co., 50 N. J. Eq., 52.*

When we seek to ascertain the powers of a corporation under this act we find that there are two sources from which its express powers are derived. These are:

- (1) The "Act Concerning Corporations."
- (2) The certificate of incorporation.

I. The "Act Concerning Corporations." It should be borne in mind that this act has a twofold scope. It contains:

- (a) A code of general rules of law applicable to all corporations.
- (b) An enabling act under which certain kinds of corporations may be formed. See Section 6.

In its first aspect it declares the fundamental powers which shall be possessed by every corporation. These are set forth in Section 1, and are, with some slight modifications, declaratory of the common law attributes of corporate existence, as stated by Coke and Blackstone.

They are basic and inherent powers, pertaining to a corporation as such without regard to the object of its creation.

It confers certain additional general powers and privileges on all corporations, however organized, but only "so far as the same are necessary or convenient to the objects set forth in such charter or certificate of incorporation." *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217; *Rabe v. Dunlap*, 51 N. J. Eq., 40; *Dittman v. Distilling Co.*, 64 N. J. Eq., 541.

It confers also certain express powers on condition that they are inserted in the certificate of incorporation. Such, for instance, as the power to issue preferred stock (Sec. 18); to transact business outside of New Jersey (Sec. 7).

It also prescribes that every corporation "shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or the act under which such corporation was formed."

This clause is applicable to corporations organized otherwise than under this act. As to corporations organized under this act, it is provided that the certificate of incorporation must be consistent with the act (Sec. 8), and Section 5 provides "this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation."

In its second aspect the act enumerates the kinds of corporations that may be organized under it, prescribes the procedure for their organization, confers upon them certain powers and privileges, and imposes certain regulations as to their conduct and management.

II. The certificate of incorporation. The second source from which a corporation derives its express powers is its certificate of incorporation, and in the discussion which follows reference is had only to corporations formed under the "Act concerning corporations."

"The general act gives to all corporations general corporate powers and all others necessary to their exercise.

"If these were not sufficient to effect the objects of the corporation recourse was formerly had to the Legislature for a specific grant of power. The Constitution providing that 'the Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained,' and the general corporation act being as it now stands passed in obedience to the mandate of the Constitution, the certificate required by that act becomes the charter of the company, and the equivalent of the former special act of the Legislature." *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217, 240, 241.

As though to carry this idea to its logical conclusion, by an amendment to Section 8 passed in 1898 (Chap. 172), corporations are now

authorized to insert in their certificate of incorporation provisions "creating and defining the powers of the corporation." This is perhaps an innovation in general enabling acts, and if the word "create" is to be given its usual and ordinary meaning it is as though the Legislature has endowed the incorporators with a lawmaking power, enabling them to give the corporation such powers as they see fit, provided only that such powers are not inconsistent with the act itself. In other words, unless a power is expressly or impliedly forbidden by the statute it may be created under this section.

These words may also be taken in a second and additional meaning, that outside of the express powers granted by Section 1, and the powers directly incidental to these powers, all others are lying dormant and not available to any other corporation under the act, until called into being and made applicable to the charter by being specified among the objects and purposes and powers of the corporation.

It is apparent that in the State of New Jersey special opportunity is given for the skill of counsel in drawing a certificate of incorporation. It is as though the Legislature had laid out, first, seven express powers which all corporations should possess, and then had defined certain limits beyond which corporate powers could not go, and then provided a method of obtaining the equivalent of a special charter containing any and every other power which should be desired, not inconsistent with the provisions of the act itself.

Implied powers.

The above statement outlines the statutory powers possessed by corporations, which may be designated its express powers. The statute then provides that "No corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers given." This is the statement in negative form of the general rule that a corporation has implied power to do any act reasonably necessary to the exercise of its express powers.

The courts of New Jersey have placed a liberal construction upon the words "necessary to the exercise" contained in the Act of 1875. "Power necessary to a corporation does not mean simply power which is indispensable * * * a power which is obviously appropriate and convenient to carry into effect the franchise granted has always been deemed a necessary one. * * * In short, the term comprises a grant of the right to use all the means suitable and proper to accomplish the end which the Legislature had in view at the time of the enactment of the charter." *State R. R. Co. v. Hancock*, 35 N. J. Law, 537. See also *McCulloch v. Maryland*, 4 Wheat, 316, 414; *Olmstead v. Morris Aqueduct*, 47 N. J. Law, 311; *Crawford v. Longstreet*, 43 N. J. Law, 325; *Morris Canal Co. v. Love*, 37 N. J. Law, 60; *State v. Mansfield*, 23 N. J. Law, 510; *Am. Dock & Imp. Co. v. Trustees*, 39 N. J. Eq., 409.

“The general corporation act confers on the company certain powers, the certificate contemplates others, and incidental powers follow, not only with respect of the general, but also of special powers.” *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., pp. 217, 241.

No rule of law is better settled than that which declares that a corporation created by statute, either special or general, can exercise no power and has no rights except such as are granted by express words or fair implication, and in the construction of such grants the rule is well settled that it must be held that what is fairly implied is as much granted as what is clearly expressed. *Rabe v. Dunlap*, 51 N. J. Eq., 40.

As an example of implied power a corporation is impliedly authorized to borrow money, and has the incidental power to give security for its repayment and to make negotiable notes, and to endorse notes loaned to it for its accommodation. *Lucas v. Pitney*, 27 N. J. Law, 221; *Fifth Ward Sav. Bank v. First Natl. Bank*, 48 N. J. Law, 513; *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep., 241. See also *Savage v. Ball*, 17 N. J. Eq., 142; *Montague v. Church District*, 34 N. J. Law, 218; *Hackensack Water Co. v. De Kay*, 36 N. J. Eq., 548.

Contracts of a corporation, whether municipal or private, stand on the same footing with contracts of natural persons, and depend on the same circumstances for their validity and effect. *Mayor v. Harrison*, 71 N. J. Law, 69.

In the absence of express statutory authority a corporation has no power to enter into a partnership. *Fechteler v. Palm Bros. & Co.*, 133 Fed. Rep., 462.

A corporation is not subject to the provisions of the bankruptcy act merely because its charter gives it the power to engage in trading or mercantile pursuits. The test is, did it in fact engage in such pursuit? *In re Tontine Co. of New Jersey*, 116 Fed. Rep., 401.

A manufacturing corporation has power to execute negotiable paper within the scope of its business, but no power to become accommodation endorser. *National Bank of Republic v. Young*, 41 N. J. Eq., 531; *Blake v. Domestic Mfg. Co.*, 64 N. J. Eq., 480.

A corporation can exercise no power and has no rights except such as are granted by express words or as are fairly implied. *Rabe v. Dunlap*, 51 N. J. Eq., 40.

Alternative writ of mandamus allowed when the charter duty of the corporation was to perform certain acts. *Lock v. Repaupo Meadow Co.*, 57 Atl. Rep., 423.

For the construction of this section in connection with the act for the incorporation of railroad companies and in connection with Section 51 of the present corporation act, see *State v. Atlantic City & S. R. Co.*, 72 Atl. Rep., 111.

Power to guarantee.

As to the nature of guarantee by one corporation of dividends on stock of another corporation, see *Bijur v. Standard Distilling, &c., Co.*, 70 Atl. Rep., 934.

Internal management.

The courts of this state cannot exercise visitorial powers over the management of the internal affairs of foreign corporations. *Jackson v. Hooper*, 76 N. J. Eq., 592.

Ordinarily courts will not interfere with the management of the internal affairs of a corporation, but this rule does not apply to transactions which are ultra vires the company or prohibited by positive law. *Siegman v. Electric Vehicle Co.*, 72 N. J. Eq., 403; *aff'd*, *Id.*, 435.

Where a corporation is engaged in competition with a rival corporation, and there is nothing to show bad faith or palpably bad judgment on the part of its directors, a court of equity, at the suit of a stockholder, will not enjoin it from selling its products for less than the cost thereof, since it is a question for the corporation and not for the courts. *Trimble v. American Sugar Refining Co.*, 61 N. J. Eq., 340.

Ultra vires.

It was formerly the rule in this state that acts of a corporation in excess of its express powers, or those necessarily implied, were void, and contracts which were ultra vires as to the corporation were incapable of enforcement or ratification. Such acts or contracts could not become the foundation of a right of action either by or against the corporation. *Trenton Mut. L. Ins. Co. v. McKelway*, 12 N. J. Eq., 133; *Nat'l Trust Co. v. Miller*, 33 N. J. Eq., 155; *Black v. Delaware & Raritan Canal Co.*, 24 N. J. Eq., 455; *Leggett v. N. J. Mfg. & Bkg. Co.*, 1 N. J. Eq., 541; *State v. Mansfield*, 23 N. J. Law, 510.

This rule no longer obtains. The present rule is that an ultra vires contract which has been performed on one side will be enforced in all cases where the party performing cannot, upon rescission, be restored to his former status. The company is deemed to have acquiesced in the ultra vires act, and is precluded from interposing its own infirmity to the injury of the other party. An executory contract, ultra vires, however, cannot be enforced, even though acquiesced in by every stockholder, and an ultra vires contract, fully executed, cannot be rescinded. *Camden & Atl. R. R. Co. v. Mays Landing, &c., R. R. Co.*, 48 N. J. Law, 530; *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217; *Chapman v. Ironclad Rheostat Co.*, 62 N. J. Law, 497.

In cases where stockholders have all assented to corporate action, and no rights of the state or creditors intervene, the doctrine of estoppel is fully applicable, and the plea of ultra vires is unavailing. *Breslin v. Fries-Breslin Co.*, 70 N. J. Law, 274; *Perkins v. Trinity Realty Co.*, 69 N. J. Eq., 723; *aff'd* 71 *Id.*, 304.

A mortgage ultra vires the corporation is held valid where the purchaser of bonds secured thereby could not control the application of the proceeds. *Camden Safe Deposit & Tr. Co. v. Citizens' Ice & Cold Stor. Co.*, 69 N. J. Eq., 718; aff'd 71 Id., 221.

Having accepted the benefits of an ultra vires contract, the corporation cannot deny its liability thereunder. *Whitehead v. American Lamp & Brass Co.*, 70 N. J. Eq., 581.

Where the business of a corporation which it is required to transact is lawful, there is no presumption that a contract made in pursuance of such business is ultra vires. *Edwards v. National Window Glass Jobbers' Ass'n*, 68 Atl. Rep., 800.

A manufacturing company has implied power to make negotiable paper for use within the scope of its business, but it has no power to become a party to bills or notes for the accommodation of others. *R. M. Owen & Co. v. Storms & Co.*, 72 Atl. Rep., 441; *Blake v. Domestic Mfg. Co.*, 64 N. J. Eq., 480.

Quasi-public corporations. The term discussed and applied. See *McCarter, Attorney-General, v. Firemen's Insurance Co.*, 73 Atl. Rep., 80; Court of Errors and Appeals. Dissenting opinion, 73 Atl. Rep., 414.

An act of a corporation, engaged in a business that is affected with a public interest, by which it contracts to enter upon a line of conduct that tends to affect such public interest injuriously, is ultra vires such corporation and may be restrained in equity at the suit of the Attorney-General whether actual injury has resulted to the public or not. *Id.*

An act which is ultra vires, because it is prohibited by law, cannot be validated either by the corporation or by the stockholders. *Siegman v. Electric Vehicle Co.*, 72 N. J. Eq., 403; aff'd *Id.*, 435.

Since there is no presumption that a contract is ultra vires the acts which constitute an excess of power must be clearly set forth in the complaint. *Edwards v. National Window Glass Jobbers' Ass'n*, 68 Atl. Rep., 800.

The doctrine of ultra vires when invoked for or against a corporation is not allowed to prevail when it would defeat the ends of justice or work a legal wrong. *Earle v. American Sugar Ref. Co.*, 71 Atl. Rep., 391.

The plea of ultra vires is not admitted except when it is practicable to restore the status quo ante. *Rutherford v. Hudson River Traction Co.*, 73 N. J. Law, 227, 235.

As to estoppel to set up the plea of ultra vires, see *Camden and Atl. Ry. Co. v. Mays Landing Ry. Co.*, 48 N. J. Law, 530, 562.

"It is well settled that an act may be intra vires or ultra vires, according to the purpose which the directors have in view in doing it." *Robotham v. Prudential Ins. Co.*, 64 N. J. Eq., 701.

The doctrine of ultra vires should be reasonably applied. *Ellerman*

v. Chicago Junction Ry., &c., Co., 49 N. J. Eq., 217; Rabe v. Dunlap, 51 N. J. Eq., 40.

Whatever may be fairly and reasonably regarded as incidental to, or consequential upon, those things which the Legislature has authorized, ought not, unless expressly prohibited, to be held by judicial construction to be ultra vires. Att'y-General v. Great Eastern Ry. Co., 5 App. Cas. (Eng.), 473; Ellerman v. Chicago Junction Ry. Co., 49 N. J. Eq., 217; Dittman v. Distilling Co., 64 N. J. Eq., 537.

The organization of subsidiary companies for the same purpose and with the same object may be fairly and reasonably regarded as incidental to the business which is expressly authorized, and should not, by judicial construction, be held to be ultra vires. Dittman v. Distilling Co., 64 N. J. Eq., 537.

It is ultra vires for a corporation to secure by mortgage moneys paid by a stockholder for stock. Reed v. Helois Carbide Co., 64 N. J. Eq., 231.

Estoppel.

A stockholder who applies to a court of equity for its summary interference to protect his stock against the consequences of an act not prohibited by law, but in excess of the power of the corporation, must act promptly and three years is not such. Rabe v. Dunlap, 51 N. J. Eq., 40.

See Brady v. Atlantic City, 53 N. J. Eq., 440.

Whatever will estop the corporation will estop the shareholders, and vice versa. Breslin v. Fries-Breslin Co., 70 N. J. Law, 274.

Silence of the stockholders of a corporation for two years, with knowledge of an illegal contract by the directors, is not a ratification. Oliver v. Rahway Ice Co., 64 N. J. Eq., 596; 61 Atl. Rep., 901.

Where the corporation has had the benefit of an ultra vires contract which has been performed by the other party, it is estopped to deny the rights of the other party unless the transaction is contrary to public policy, forbidden by law, or immoral. Camden Trust Co. v. Citizens' Cold Storage Co., 69 N. J. Eq., 718.

A corporation cannot complain of a transaction to which all of its stockholders assent with knowledge of the facts. Arnold v. Searing, 73 N. J. Eq., 262.

Remedies.—1. By the stockholders and third persons.

The Court of Chancery will interfere by injunction, at the instance of a stockholder, to restrain the corporation from using the corporate funds in the exercise of unauthorized powers. Gifford v. N. J. R. & Transportation Co., 10 N. J. Eq., 171; Elkins v. Camden and Atl. R. R. Co., 36 N. J. Eq., 5. And in Del. & Rar. Canal v. Rar. & Del. Bay R. Co., 16 N. J. Eq., 321; aff'd 18 N. J. Eq., 546, it was held that a court of equity will restrain a corporation from exercising powers with which

the Legislature has not invested it if those powers interfere with the rights or property of others, whether such exercise is mistaken or fraudulent. See *Millville Gas Light Co. v. Vineland Light & Power Co.*, 72 N. J. Eq., 305.

A charge, in a bill, of want of power by a stockholder to contest the validity of an agreement made by the directors, contained in a separate and distinct paragraph unconnected with the incidents and conditions of fact under which the agreement was entered into, is demurrable. *Thompson v. Moxey*, 47 N. J. Eq., 538.

2. Proceedings by the Attorney-General to forfeit the charter of the company.

“The state may interpose its authority at any time and compel an abandonment of the act in excess of power, and, if need be, revoke the charter of the company for its usurpation.

“When the state challenges the legality of the transaction, the paramount and only question is whether it has bestowed upon the company the requisite authority to engage in it. When the question arises between the company and the other party to the contract, other legal principles apply in determining whether the contract shall be observed.” *Camden & Atl. R. R. Co. v. Mays Landing, &c., R. R. Co.*, 48 N. J. Law, 530.

The Court of Chancery is not the proper tribunal for calling in question the rights of a corporation as such, for the purpose of declaring its franchises forfeited and lost. Such power is of right to be exercised by a court of law. *Society for Establishing Useful Manufactures v. Morris Canal & Bkg. Co.*, 1 N. J. Eq., 157; *Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352; *aff'd* 56 N. J. Eq., 847; *McCarter v. Firemen's Ins. Co.*, 70 N. J. Eq., 291; *McCarter v. Pittmon, Glassboro & Clayton Gas Co.*, 69 Atl. Rep., 211.

“Trusts”: Power of court of equity to restrain.

A court of equity does not possess power to restrain a corporation, organized under the forms of law, from performing acts within its corporate power because the purpose of the incorporators may have been to establish a monopoly. Quo warranto is the appropriate procedure to challenge the right of a corporation to exercise its franchises. *Stockton v. Am. Tobacco Co.*, 55 N. J. Eq., 352; *aff'd* 56 N. J. Eq., 847.

Unlawful combinations.

“It may be conceded that if this corporation had entered into an agreement with other manufacturers of these goods, whether those manufacturers were individuals or corporations, by which agreement prices were to be fixed and competition paralyzed, such an arrangement would be a subject of equitable cognizance. Such was the case of *Stockton, Attorney-General, v. Central Railroad Co. and Philadelphia & Reading*

Railroad Co., 50 N. J. Eq., 52. In that case the defending corporations had entered into a contract to lease the Central Railroad to what was substantially the Philadelphia and Reading Railroad. The lease was declared not only to be ultra vires, but to be made for the purpose of creating a monopoly in coal. The right of either of these companies to regulate its own business, whether it involved the fixing of the price for which coal should be sold, or to whom it should be sold, was not involved, nor were the corporate powers of the company curtailed. What was done by the Court of Chancery was to annul a contract made by one company with another corporation, entirely aside from its corporate power and executed for an illegal purpose." *Id.*, at pp. 367, 368.

Same.

A stockholder cannot enjoin a corporation, which is engaged in refining and selling sugar, from selling its product below cost, on the ground that it is doing so for the purpose of forcing a rival concern into an unlawful combination, since neither of the corporations has a natural monopoly, and the public cannot object to their acting in combination. *Trimble v. Am. Sugar Refining Co.*, 61 N. J. Eq., 340.

3. Banking powers prohibited to corporations organized under this act.

No corporation created or to be created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, or of receiving deposits of money, of buying gold or silver bullion or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

(As amended by Chap. 176, Laws of 1899; P. L. 1899, p. 473.)

P. L. 1846, p. 16; Act of 1875, § 4.

This section affects in no way the power of a corporation to issue and receive negotiable paper in the usual course of business or for purposes incidental to legitimate business. *Morawetz on Corpns.*, Section 321.

The general prohibition against the exercise of unauthorized banking powers is contained in the "Act Concerning Banks and Banking" (Revision of 1899). Banking corporations must form under that act.

Corporations organized under an "Act Concerning Trust Companies" have all the powers of banks except the power to discount bills and notes.

As to the right of a corporation to loan its credit or cash for the express purpose of fostering its legitimate business, see *Whitehead v. Am. Lamp & Brass Co.*, 70 N. J. Eq., 581, at 585; *Earle v. Am. Sugar Refining Co.*, *post*.

The business of banking, as defined by law and custom, consists, among other things, in making loans of money on collateral security. *Earle v. Am. Sugar Refining Co.*, 71 Atl. Rep., 391, 395.

This section applies to all corporations and is not limited to corporations created under the Act of 1896. It indicates what shall be banking powers, and a certificate of incorporation cannot include such powers. *McCarter v. Imperial Trustee Co.*, 72 N. J. Law, 42.

Where a corporation has power to issue negotiable paper a *bona fide* holder may presume that it was issued under proper authority, and the right of such a holder can be defeated only by showing that he took the paper with knowledge of the infirmity or with such suspicion that his conduct in taking it was fraudulent. *National Bank of Republic v. Young*, 41 N. J. Eq., 531.

4. Charters subject to repeal.

The charter of every corporation, or any supplement thereto or amendment thereof, shall be subject to alteration, suspension and repeal, in the discretion of the legislature, and the legislature may at pleasure dissolve any corporation.

P. L. 1846, p. 65; P. L. 1849, p. 301; Act of 1875, §§ 6, 13.

This provision in effect becomes a part of every charter granted, to which by its terms it is applicable. *Shiloh Turnpike Co. v. Bates*, 76 Atl. Rep., 448.

An act granting an exemption from taxation containing a provision for future repeal is nothing more than a legislative concession voluntarily made, subject at any time to be withdrawn or modified at the will of the Legislature. *Morris & Essex R. R. Co. v. Commissioners, &c.*, 37 N. J. Law, 228; *Little v. Bowers*, 46 N. J. Law, 300.

Constitutional Provision.

The State Constitution, Article IV, Section 7, subdivision 11, also contains provisions reserving the power to alter or repeal charters, as follows: " * * * The Legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature

obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.”

New York State.

The statute of the State of New York, subjecting corporate charters to alteration, suspension and repeal, in the legislative discretion, is contained in Section 320 of the General Corporation Law of that state, which reads as follows:

“§ 320. Alteration and repeal of charter. The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the Legislature.”

It has been held respecting the above provision that the reservation becomes a part of the charter of every corporation, whether organized under a general act or by special statute, thus preventing it from becoming irrevocable. *Lord v. Equitable Life Assur. Society*, 194 N. Y., 212; *Pratt v. City of N. Y.*, 183 N. Y., 151.

Under its reserved power the Legislature cannot interfere with or annul contracts made with third persons, nor can it take away property acquired by the corporation without providing compensation, as such property is protected by the United States Constitution. *Mayor, &c., v. N. Y. & Twenty-third St. Ry. Co.*, 113 N. Y., 317; *People v. O'Brien*, 111 N. Y., 1.

For additional cases under the New York statute, see *White on Corporations* (seventh edition), pages 182, 183.

Charters are contracts.

“Charters of private corporations are regarded as executed contracts between the state and the corporator, and the rule is settled that if the charter does not contain a reservation of power in the Legislature to modify or change the contract, the Legislature cannot repeal, impair or alter such a charter against the consent or without the default of the corporation.” *Montclair v. N. Y. & Greenwood Lake Ry. Co.*, 45 N. J. Eq., 436; *Cooper Hospital v. Camden*, 68 N. J. Law, 691; *Trustees of Dartmouth College v. Woodward*, 4 Wheaton (U. S.), 418.

“The power of the Legislature has its limits. It can repeal or suspend the charter; it can alter or modify it; it can take away the charter; but it cannot impose a new one and oblige the stockholders to accept it.” *Zabriskie v. Hackensack & N. Y. R. Co.*, 18 N. J. Eq., 178, 192.

The Legislature has no authority to make any alteration or amendment, in a charter granted subject to this section, that will defeat or substantially impair the object of the grant or any rights which have vested under it. *Id.*

The power to repeal, suspend or alter the charter is “a reservation to the state for the benefit of the public, to be exercised by

the state only. The state was making what had been decided to be a contract, and it reserved the power of change, by altering, modifying or repealing the contract." *Mills v. Central R. R. Co. of N. J.*, 41 N. J. Eq., 1, 8.

A charter granted as a special act of the Legislature containing a limitation on the power of the corporation is a part of the contract existing between the stockholders themselves and between stockholders and the corporation, which, under the Federal constitutional restriction against the impairment of the obligation of contracts, cannot be abrogated by the directors or by a majority of the stockholders, however large, against the objection of the holder of a single share. *Einstein v. Raritan Woolen Mills*, 74 N. J. Eq., 624.

The Legislature has power to confer upon a court authority to declare a charter forfeited for a specified misfeasance or malfeasance. *Huyler v. Cragin Cattle Co.*, 40 N. J. Eq., 392, 396. See section 44, post.

4a.* Notice of intention to repeal.

Of the intention to apply for the passage of a bill to repeal the charter of any corporation, or bill to repeal the charter and dispose of the property of any corporation, the public notice required by the first section of the act to which this is a supplement shall be given by publishing the same, in a daily newspaper published in Trenton, for at least six consecutive days prior to the introduction of such bill, and by serving a copy of the notice upon the president or secretary or a director or registered agent of the corporation, if such officer or agent can be found within this state, and if none of them can be found, then by personal service of such copy upon them or one of them out of this state, or by mailing a copy to them or one of them, directed to the residence or post-office address of such officer or agent, if known.

Supplement to "An Act to prescribe the notice to be given of applications to the Legislature for laws, when notice is required by the constitution," approved February 21, 1905; P. L. 1905, p. 17.

*Arbitrary number. Section inserted here merely for convenient reference.

5. This act may be amended or repealed, at the pleasure of the legislature, and every corporation created under this act shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation.

P. L. 1846, p. 65; P. L. 1849, p. 301; Act of 1875, §§ 14, 35.

See notes to Section 4, *ante*.

This section is a re-enactment of the sixth section of the Act of 1846. The law was passed for the purpose of avoiding the rule in the Dartmouth College Case (4 Wheaton, 518), namely, that a corporate charter is a contract between the state and the corporation, which the state cannot modify. *Zabriskie v. Hackensack, &c., Ry. Co.*, 18 N. J. Eq., 178.

But the statute may not be construed as giving a majority of the stockholders the power to alter the purposes of incorporation or of impairing the rights of stockholders *inter sese*, except in so far as impairment may result from alteration required by public interest. *Berger v. U. S. Steel Corporation*, 63 N. J. Eq., 809; *In re Newark Library Ass'ns*, 64 N. J. Law, 217, 265; *Rabe v. Dunlap*, 51 N. J. Eq., 40, 46.

“It is difficult to perceive,” said Van Syckel, J., in the above case, “how any substantial force can be accorded to it (Sec. 5), unless some amendment may be made which may affect the rights of stockholders *inter sese* to some extent.”

The extent to which the law upon this subject will go remains unsettled. The general rule must be developed gradually.

II.—Formation, Constitution, Alteration, Dissolution.

6. Purposes for which corporations may be formed.

Upon executing, recording and filing a certificate pursuant to all† the provisions of this act, three or

†See Section 43a.

more persons may become a corporation for any lawful purpose or purposes whatever, other than a savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company, or other company which shall need to possess the right of taking and condemning lands in this State, or other than a corporation provided for by "An act concerning banks and banking (Revision of 1899)," or by "An act concerning trust companies (Revision of 1899)," or by "An act concerning safe deposit companies (Revision of 1899)." It shall, however, be lawful to form a company hereunder for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside of this State; provided, that any company organized under the provisions of this act for cremation purposes shall, before beginning business, file a certified copy of its certificate of incorporation with the State Board of Health and obtain from said board a license to carry on said business, under such rules and regulations as said board may prescribe.

As amended by Chap. 12, Laws of 1907; P. L. 1907, p. 35.

P. L. 1846, p. 64; P. L. 1849, p. 300; P. L. 1852, p. 87; P. L. 1853, p. 427; P. L. 1855, p. 706; P. L. 1865, p. 707; P. L. 1865, p. 913; P. L. 1869, p. 1001; Act. of 1875, § 10; P. L. 1876, p. 103; P. L. 1880, p. 92; P. L. 1888, p. 112; P. L. 1889, p. 411; P. L. 1894, p. 497; P. L. 1899, p. 473.

Corporations may be organized under this act for any lawful purpose or purposes, and are not limited to a single object or purpose.

The incorporation of the classes of corporations expressly excepted from the provisions of this section is provided for by other acts. Some of these acts contain express provisions prohibiting the incorporation of companies provided for by them under any other act. See "An Act concerning banks and banking, Revision of 1899" (P. L. 1899, p. 431). Under the provisions of the Trust Company Act of 1899, not only is the organization of a trust company forbidden under any other act, but the act forbids the exercise of certain specified powers exclusively

conferred upon trust companies (P. L. 1899, p. 453), the more important of which are:

“(1) To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

“(2) To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

“(5) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

“(16) To receive and manage any sinking fund of any corporation, upon such terms as may be agreed upon between said corporation and those dealing with it.

“(17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.”

There are other classes of corporations not specified in this section for the incorporation of which separate acts have also been passed. Among them are gas companies (G. S., p. 1608), water companies (G. S., p. 2199), sewerage companies (G. S., p. 2190), street railways (G. S., p. 3216), and traction companies (G. S., p. 3235). These acts are not by their terms expressly exclusive. Can companies, for the organization of which other general laws exist, be lawfully incorporated under this act? The safe answer is the negative.

“The effect of a separate Act of the Legislature providing for the organization of a class of corporations, or corporations with certain powers, in ways and under conditions inconsistent with or different from those prescribed by the ‘Act concerning corporations,’ is to prohibit their organization under the ‘Act concerning corporations.’” *Montclair Military Academy v. Assessors*, 65 N. J. Law, 516. See also *Fogg v. Ocean City*, 74 N. J. Law, 362; *McCarter v. Hudson County Water Co.*, 70 N. J. Eq., 695; *aff’d* 209 U. S., 349, 52 L. Ed., 828; *Perrine v. Jersey Central Traction Co.*, 70 N. J. Law, 168.

In *Richards v. Dover*, 61 N. J. Law, 400, 402, the court said: “The passage of these general laws authorizing the incorporation of gas companies shows a clear legislative intent to separate gas companies from those corporations which may lawfully be organized and provided under the general corporation act, and to subject the former to limitations and restrictions not applicable to the latter. * * * Mr. Justice Magie, in *Domestic Telegraph Co. v. Newark*, 49 N. J. Law, 344, 348, said that the passage of the act * * * providing for the organization of telegraph and telephone companies, in modes and under conditions quite inconsistent with those prescribed by the general corporation act, seemed to be a strong legislative declaration

that such companies could not be organized so as to acquire a corporate existence under the latter act. In my judgment, the Legislature has clearly expressed its intention that no corporation shall acquire or exercise the franchise of a gas company without subjecting itself to the salutary provisions of the gas act by incorporating under it."

"A certificate of incorporation filed under this Act cannot include powers such as are intended to derive profit from the loan and use of money." *McCarter v. Imperial Trustee Co.*, 72 N. J. Law, 42.

In *United States v. Northern Securities Co.* it was held that the language of this section means, obviously, that whatever powers the incorporators see fit to assume, they must hold and exercise for the accomplishment of lawful objects. However extensive and comprehensive these powers may seem to be, they shall not be exercised to set at defiance any lawful statute of Congress or of any state. 120 Fed. Rep., 721, at page 727; *aff'd* 193 U. S., 197.

This section does not authorize the incorporation of companies for the purpose of diverting streams and storing and selling the water. *McCarter, Att'y-Gen'l, v. Hudson Water Co.*, 70 N. J. Eq., 695.

Partners who have formed a corporation may not thereafter become at will either a partnership or a corporation with intent to reap the advantages of both forms. *Jackson v. Hooper*, 76 N. J. Eq., 592.

A corporation formed for the purpose of examining titles to property has the same privileges of examining public records as an individual. *West Jersey Title & Guaranty Co. v. Barber*, 49 N. J. Eq., 474.

Powers.

For the statutory enumeration of the general powers of a corporation, see Section 1, *ante*.

Persons.

The word "persons" in this Act does not include corporations. By analogy, *Coddington v. Exrs. of Havens*, 8 N. J. Eq., 590.

A corporation cannot in its own name subscribe for stock, or be a corporator under the general railroad law; nor can it do so by simulated compliance with the provisions of the law through its agents as pretended corporators and subscribers for stock. *Central R. R. Co. of N. J. v. Pa. R. R. Co.*, 31 N. J. Eq., 475, 494.

Compare Section 51, *post*, giving any corporation the power to purchase, hold, &c., stock and bonds of other corporations.

A corporation, though an artificial person existing only in contemplation of law, may act inherently for itself through its administrative officers, as a natural person. Likewise it may authorize an agent or attorney to act for it. When it does not go outside of its corporate machinery and capacity in doing a corporate act, it is a confusion of

terms and of ideas to say that it is acting through an agent when the fact is that it is acting through an agency, and in chief. *Am. Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721; 16 L. R. A. (N. S.), 703, and cases cited.

Infants.

The statute authorizes persons to form a corporation; it is implied that they shall be of full age. *Matter of Globe, &c., Ass'n*, 135 N. Y., 280, 284, and cases cited. See also *Lindley on Companies*, p. 39. In England it has been held that the incorporation is not rendered invalid by the fact that one of the subscribers was an infant. *Nassau Phosphate Co.*, 2 Ch. D., 610.

7. Business outside the state.

Any corporation of this state, heretofore or hereafter organized under the laws of this state, may conduct business, have one or more offices, and hold, purchase, mortgage and convey real and personal property outside of this state in any of the several states, territories, possessions and dependencies of the United States, the District of Columbia, and in foreign countries; provided, such powers are included within the objects set forth in its certificate of incorporation or charter.

As amended by Chap. 263, Laws of 1905; P. L. 1905, p. 515.
P. L. 1865, p. 354; Act of 1875, § 15; P. L. 1889, p. 412.

The power of a corporation to do business in a state other than the state of its creation depends primarily on the charter, subject to the conditions imposed by the state where the business is carried on. *Baltimore & Ohio R. R. Co. v. Koontz*, 104 U. S., 5; see also *Bank of Augusta v. Earle*, 13 Pet., 519, 588.

The power of a New Jersey corporation to do business without the state is based upon this provision. The corporation exists by force of the law that created it, and where that law ceases to exist and is not obligatory, the corporation can have no existence. *Hilles v. Parrish*, 14 N. J. Eq., 380, 383.

Under the Act of 1875 and the supplement of 1889 (P. L. 412) a corporation could carry on a part of its business out of the state, provided that the portion of such business to be carried on out of

the state and the location of its principal office or place of business out of the state were stated in the certificate of incorporation. An act of 1892 permitted any corporation to carry on and conduct its business outside of the state, though not so empowered in the certificate of incorporation. (P. L. 1892, p. 90.) The question arose whether a manufacturing corporation, incorporated under the Act of 1875, which stated in its certificate that the business to be carried on in the state was manufacturing, and that the portion of its business outside the state was the selling of its manufactured products in the cities of New York and Brooklyn, could under the Act of 1892 remove its manufacturing plant to another state. It was held by the Court of Chancery that such a removal was a material change in the object of the company which could not take place without the consent of every stockholder. The Court held, however, that a removal to another part of the state was not a material change. *Stickle v. Liberty Cycle Co.*, 32 Atl. Rep., 708.

Section 7 of the present act was apparently drafted for the purpose of meeting this case, and where the certificate of incorporation is properly drawn the power can be put in the directors to carry on the business of the company wherever from time to time they deem will be best suited to the objects of the company.

Where the corporation is to conduct its operations in another state it is important to ascertain what laws of that state are applicable to foreign corporations. Such laws are, in some instances, in express terms applicable to foreign corporations, and other laws, applicable to corporations generally, have been construed by the courts to apply to foreign as well as domestic corporations. For an example of the latter, see *Williams v. Gaylor*, 186 U. S., 157, where it was held that a statute of California prohibiting the directors of a mining corporation from selling or encumbering its mining ground unless ratified by the stockholders, applied to foreign corporations, having been so held by the Supreme Court of California, and that such a requirement was not a regulation of the internal affairs of the corporation, but had reference to the conduct by it of its business.

“The power of a state to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations.” *Dayton Coal & Iron Co. v. Barton*, 183 U. S., 23.

Liability of stockholders under laws of other states.

The laws of some of the states with respect to the liability of stockholders are in express terms made applicable to foreign corporations. Thus it has been held by the United States Supreme Court construing a California statute to that effect, that where a corporation was chartered in Colorado for the express purpose of carrying on part of its operations in the State of California, the stockholders were liable to

creditors according to the provisions of the California statute. *Pinney v. Nelson*, 183 U. S., 144.

This section is limited where the laws of a foreign state provide that no corporation organized outside of the state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations in the state. Under such provisions a foreign corporation is not entitled to more favorable conditions than a domestic corporation. *Coler v. Tacoma Ry. & Power Co.*, 65 N. J. Eq., 347.

As to the legality of a contract made in a foreign state without first having procured the authority of such state to transact business, see *Allegheny Co. v. Allen*, 69 N. J. Law, 270; see also s. c 196 U. S., 458.

A foreign corporation cannot legally do what is prohibited a domestic corporation, thereby securing the right to transact business on more favorable terms than are prescribed for domestic corporations. *Coler v. Tacoma Ry. & Power Co.*, 65 N. J. Eq., 347.

When a contract of sale of tangible chattels situated in another state is made between a citizen of that state and a New Jersey corporation, and is to be performed in the foreign state, the law of that state governs. *Cooper v. Philadelphia Worsted Co.*, 68 N. J. Eq., 622.

State comity.

By the general comity which, in the absence of express provisions to the contrary, prevails through the states and territories of the United States, corporations created in one state or territory are permitted to carry on any lawful business in another, and to acquire, hold and transfer property there equally as individuals. If such other state does not permit the foreign corporation to do business in its limits, or to acquire or hold real property there, it must be expressed in some affirmative way. *Cowell v. Springs Co.*, 100 U. S., 55; *Christian Union v. Yount*, 101 U. S., 352.

Certificate of Incorporation.

8. The certificate of incorporation shall be signed in person by all the subscribers to the capital stock named therein, and shall set forth:

I. The name of the corporation; no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion;

II. The location (town or city, street and number, if number there be) of its principal office in the state;

III. The object or objects for which the corporation is formed;

IV. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars; and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created;

V. The names and post-office address of the incorporators and the number of shares subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least one thousand dollars;

VI. The period, if any, limited for the duration of the company;

VII. The certificate of incorporation may also contain any provision which the incorporators may chose to insert, for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders; provided, such provision be not inconsistent with this act.

As amended by Chap. 172, § 2, Laws of 1898; P. L. 1898, p. 408.

P. L. 1846, p. 64; P. L. 1849, p. 300; Act of 1875, § 11; P. L. 1876, p. 103; P. L. 1884, p. 82; P. L. 1888, p. 152.

The certificate of incorporation must also contain the name of the registered agent. (See Section 43a.)

The certificate of incorporation should be signed in person. It is not proper to sign by an attorney in fact.

Every person named in the certificate of incorporation as a subscriber to the capital stock must sign the certificate. This is to prevent the use of unauthorized names as subscribers to capital stock.

The certificate should also be sealed by all the subscribing incorporators. Section 9 requires the certificate of incorporation to "be proved or acknowledged as required for deeds of real estate." The officer before whom the acknowledgments are taken shall certify that the "party signed, sealed and delivered" the same. P. L. 1898, p. 679.

Section 8 construed in connection with sections 18 and 86. *Lloyd v. Penn. Electric Vehicle Co.*, 72 Atl. Rep., 16.

Public grants, whether of lands or of franchises, are strictly construed. *American Dock Improvement Co. v. Trustees*, 39 N. J. Eq., 409.

Certificate of incorporation.

The certificate of incorporation is the charter of the company, and is held to be equivalent to a special act of the Legislature. *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217; *Oregon Ry. Co. v. Oregonian Ry. Co.*, 130 U. S., 1.

It is to a certain extent—

- (1) A contract between the corporation and the state. *Montclair v. N. Y. & Greenwood Lake Ry. Co.*, 45 N. J. Eq., 436.
- (2) A contract between the individual stockholders and the corporation. *Kean v. Johnson*, 9 N. J. Eq., 401; *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440; *Einstein v. Raritan Woolen Mills*, 74 N. J. Eq., 624.
- (3) A contract between the stockholders themselves. *Id.*

A provision in the certificate that stockholders of record on the books of the company when an assessment is made shall be liable therefor, is not inconsistent with the statute. And this provision is binding upon a person who became a stockholder after the company was organized. *Brown v. Morton*, 71 N. J. Law, 26.

Modification of stockholders' rights.

Since the certificates of shares constitute a contract between the stockholders and the company, the contract cannot be altered without the stockholders' consent unless the right to do so has been expressly reserved. An alteration of the rate of dividends on preferred stock cannot be made without the stockholders' consent. *Pronick v. Spirits Distributing Co.*, 58 N. J. Eq., 97.

Existing laws are read into the contract of incorporation and constitute a part of that contract. The power to extend corporate exist-

ence, to increase capital stock, to change nature of business and to purchase property with stock is thus granted. *Smith v. Eastward Wire Mfg. Co.*, 58 N. J. Eq., 331.

But when the change in preferred stock affects only those who assent to the agreement and when the rights of non-assenting stockholders are not impaired, a change may be made provided the statutory requirements are followed. Non-cumulative preferred stock may be substituted for cumulative dividend paying stock, but the right of any preferred stockholder to participate in dividends cannot be taken away without his consent. *Willcox v. Trenton Potteries Co.*, 64 N. J. Eq., 173.

Even if an agreement changing the status of preferred stock should be construed as varying the rights of non-assenting stockholders, it does not follow that an injunction should issue restraining the carrying out of the scheme. *Id.*

Stockholders of a corporation have a right to have the corporate property applied and used exclusively for purposes specified in the charter and any attempt of the managers to apply it to other purposes is a usurpation of power. But laches on the part of a stockholder will bar his right to question corporate acts which are merely in excess of power and not prohibited by law. *Rabe v. Dunlap*, 51 N. J. Eq., 40.

The stockholder's right to participate pro rata in a new issue of stock cannot be abridged. *Wall v. Utah Copper Co.*, 70 N. J. Eq., 17.

A dissenting stockholder may question the validity of a sale when the condition of subscription for stock in the new company makes him liable for additional payments and requires his participation in another company. *Mitchell v. United Box, Board & Paper Co.*, 72 N. J. Eq., 580.

Under a contract made by the directors of a corporation by which a purchaser of the corporate property agrees to pay all debts and the par value of the stock to the stockholders, the purchaser becomes liable to each stockholder when the deed is accepted, under P. L. 1903, p. 541, Sec. 48. *Fleming v. Reed*, 77 N. J. Law, 563.

In New York State it has been held that upon an increase of capital stock a stockholder has an inherent right to a proportionate share of new stock, provided that such stock is issued for money only and not for the purchase of property for corporate purposes or to affect a consolidation. *Stokes v. Continental Trust Co.*, 186 N. Y., 285.

Charter cannot be attacked collaterally.

The regularity of the organization of a corporation cannot be questioned collaterally in any court at the instance of a private person, and irregularities and omissions in such organization cannot be taken advantage of in a proceeding instituted by a private person, but only in a direct proceeding in behalf of the state, inquiring by what warrant the corporate grant is being used. *Attorney General v. Stevens*, 1 N. J. Eq., 369; *Elizabethtown Gas Light Co. v. Green*, 49 N. J. Eq.,

329, 331, citing *National Docks R. R. Co. v. Central R. R. Co. of N. J.*, 32 N. J. Eq., 755; *Stout v. Zulick*, 48 N. J. Law, 599; *West Jersey R. R. Co. v. Cape May, &c., R. R. Co.*, 34 N. J. Eq., 164; *Terhune v. Midland R. R. Co.*, 38 N. J. Eq., 423; *Jersey City Gaslight Co. v. Consumers' Gas Co.*, 40 N. J. Eq., 427; *New Jersey Southern R. R. Co. v. Long Branch*, 39 N. J. Law, 28. See also *Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352; *aff'd* 56 *Id.*, 847.

I. Corporate name.

It is permissible for a corporation to assume the name used by the incorporators as a firm name, or an individual name may be used. The name must not contain the words "insurance," "safe deposit," "trust company" or "bank." See Section 130, *post*.

The court will restrain a domestic corporation from using a name so similar to that of another domestic corporation as to lead to uncertainty or confusion. *Glucose Sugar Refining Co. v. American Glucose Sugar Refining Co.*, 22 N. J. L. J., 147; *L. Martin Co. v. L. Martin Wilckes Co.*, 71 Atl. Rep., 409; reversed on question of accounting, 72 *Id.*, 294; *St. Patrick's Alliance of America v. Byrne*, 59 N. J. Eq., 26.

Incorporation under a name adopted in imitation of that already in use by a corporation of another state, thereby deceiving the public and appropriating the complainant's good-will and reputation, does not afford immunity from injunction against carrying on business under such name. That the complainant is a corporation foreign to the state in which the defendant is incorporated is no defence. *Peck Bros. & Co. v. Peck Bros. Co.*, 51 C. C. A., 251-261; 113 Fed. Rep., 291; *aff'd* 187 U. S., 643.

A corporation cannot appropriate the name or trade-mark of another, and thus obtain its business by any simulation or deceit. But where the complainant itself has by its own acts created in great part the very confusion of which it complains it will not be aided by equity. *Bear Lithia Springs Co. v. Great Bear Spring Co.*, 72 N. J. Eq., 871.

A corporation may use the name of a person in its title where it is selling or exhibiting, under proper authority, the machines or instruments of such person and under circumstances showing no fraud or intention to deceive the public. *Edison v. Mills-Edisonia*, 70 Atl. Rep., 191; see also *Edison Storage Battery Co. v. Edison Auto Co.*, 67 N. J. Eq., 44.

A surname or the name of a town may have become so associated with a particular product as to constitute an asset which passes with an absolute sale of the company. *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.*, 208 U. S., 554.

Hence, another person of the same or similar name may not so use his name as to deprive others of their rights or to deceive the public. *Intern'l Silver Co. v. Rogers*, 72 N. J. Eq., 933; see also *Same v. Same*, 67 N. J. Eq., 646.

As to unauthorized use of name of individual, see Edison Polyform Mfg. Co., 67 Atl. Rep., 392.

The voluntary adoption of part of a name which had long been used by another corporation raises a presumption that it was done with intent to profit by another's reputation. *Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co.*, 69 N. J. Eq., 159.

The right to the exclusive use of a corporate title will be protected upon the same principle that individuals are protected in the use of trade marks *State v. McGrath*, 5 S. W. Rep., 29.

A contract is not void because the corporation with which it is made is misnamed therein. *Hoboken Bldg. Ass'n v. Martin*, 13 N. J. Eq., 427; *Woolwich v. Forrest*, 2 N. J. Law, 107; *Middletown v. McCormick*, 3 N. J. Law, 92. See also (as to grants) *Inhabitants, &c., Alloway's Creek v. String*, 10 N. J. Law, 323; *Den v. Hay*, 21 N. J. Law, 174, and (as to bequests) *Van Wagenen v. Baldwin*, 7 N. J. Eq., 211; *McBride v. Elmer*, 6 N. J. Eq., 107; *Goodell v. Union Ass'n*, 29 N. J. Eq., 32; *Lanning v. Sisters of St. Francis*, 35 N. J. Eq., 392.

It was held in *Alexander v. Berney*, 28 N. J. Eq., 90, that "a corporation may assume a name by usage." For a somewhat similar case, see *Den v. Helmes*, 3 N. J. Law, 600.

As to the right which a corporation has in its corporate name, see *Yale Law Journal*, Vol. 17, p. 286, February, 1908.

II. Registered office in the state.

The Act of 1875 required the place of business, both within and without the State of New Jersey, to be given; also the portion of the business of the company to be conducted outside of the state.

In 1898 this section was amended in its present form.

The object of the amendment was to require the certificate of incorporation to state the exact location of the principal office.

By Chap. 173 of the Laws of 1898 (Sec. 43a, *post*) it is required to state the name of the agent in the principal office, and in charge thereof, and upon whom process against the corporation may be served. It is usual to state it in this form: "The location of the principal office in this state is at No. _____ street, in the city of _____

County of _____. The name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is _____."

The policy of the State of New Jersey, as indicated by the Act of 1898, is first to compel all corporations to have a registered office in the State of New Jersey and with a known and published agent in charge thereof, authorized to transfer stock and to receive process against the corporation, and then to give corporations power to do business anywhere out of the State of New Jersey and in foreign countries without designating any place of business out of the state. The agent may be changed from time to time by the directors.

So far as the laws of New Jersey are concerned, corporations have

no principal office outside the state of New Jersey. They have the right to do business anywhere out of the state, if suitable provision is made in the charter. See Section 7. See also *Nicholson v. Wheeling, L. E. & P. Coal Co.*, 110 Fed. Rep., 105.

III. Objects.

Companies may be formed under this act for any lawful purpose or purposes except such as are expressly prohibited by Section 6, *ante*, and probably others not recited in that section, for which separate acts have been provided.

Associations not for pecuniary profit are required to be organized under Chap. 181, Laws of 1898 (P. L. 1898, p. 422).

This section formerly read "the objects for which," etc. This amendment and the amendment of Section 6 in 1899 were intended to answer affirmatively the question which has been frequently asked, whether a company may be formed under this act for more than one object or purpose.

This being the important part of the certificate of incorporation, great care should be taken that the objects and purposes of the company are stated in the fullest and clearest manner possible, because the company cannot undertake any business not authorized by its charter, and not even the fullest sanction given by the shareholders will make valid an act which is outside the powers of the company. Directors undertaking any such business may become personally liable for loss, and great inconvenience follows from companies having too limited powers. It is often questioned how far it is necessary to detail in extenso in the certificate of incorporation the powers of the company. The answer is plain.

The balance of disadvantage decidedly attaches to too narrowly defined objects.

It is easier to compress, so to speak, the business of a company within the limits of large objects and broad powers than to develop in the face of narrowly defined objects.

The powers of the corporation cannot be enlarged by the by-laws. *Stewart v. Odd Fellows' Mut. Life Ins. Co.*, 12 N. J. L. J., 110.

It is customary to insert general words, such as "in general to carry on any other business whether manufacturing or otherwise." But it must be understood that the courts limit such words to operations of a nature similar to the business previously mentioned, and will not include any wholly fresh business.

Speaking of the prescribed objects of a corporation, the Court of Errors and Appeals, in *State v. Atlantic City & Shore R. R. Co.*, 77 N. J. Law, 465, 477, said: "The legislative purpose is to preserve, for the benefit of the people and of private parties concerned, solemn evidence of the corporate powers that have been granted, of the contract made between the state and the corporators, and of the contract made by the corporators *inter sese*."

As between the incorporators, the corporate objects contained in the certificate of incorporation cannot be changed without unanimous consent, unless changed by virtue of some act of legislation which may be read into the contract. *Colgate v. U. S. Leather Co.*, 72 Atl. Rep., 126. Action on the part of the corporation to change the nature of its business must be exercised, if at all, by direct proceedings taken pursuant to the statute. *Id.*

A corporation formed from an association is entitled to a conveyance from the vendor, of land which the vendor had contracted to sell to the association. *African M. E. Church v. Conover*, 27 N. J. Eq., 157.

IV. Stock.

There is no limit as to the amount of capital stock which a corporation formed under this act may have. It is necessary that the total amount should be not less than \$2,000, and it is necessary that at least \$1,000 of stock should be subscribed by the incorporators, this constituting the amount of capital stock with which the company will commence business.

The par value of the shares may be fixed at any amount. The question has been asked whether the par value of the shares could be expressed in foreign standards of value, as English pounds sterling. It would seem, however, from the language used, that the monetary standard of the United States is intended. There could be no objection, however, it is apprehended, to the issuing of shares with an exchange value in foreign money, in order that certificates issued in foreign countries might be issued bearing both the United States value and its equivalent in the money of the foreign country.

This section, before it was amended, required "the amount" with which the company would commence business to be stated. It was thought that this required the company to have at least \$1,000 paid into its treasury before it could commence business. It seems clear now, however, that the company may commence business at once and may call the subscriptions to its capital stock at such time as the directors find convenient. The law does not require that this \$1,000 shall be paid in cash. It may be paid in property if the directors so decide. One of the subscribers may pay the subscriptions of the others, in cash or property. *Vail v. Phillips*, 14 N. J. L. J., 45. The capital stock subscribed by the incorporators should not be more than two-thirds preferred stock. See Section 18, *post*.

In view of the fact that the cost of filing the certificate of incorporation is the same (*i. e.*, \$25) for any amount of total authorized capital not exceeding \$125,000, it is customary to insert in the certificate power to issue stock to the amount of \$100,000 or \$125,000. The company may then at such times as the business requires issue stock

up to the amount limited without filing a certificate of increase of capital stock under Section 27.

Where there is more than one kind of stock the certificate of incorporation should contain the designation and description of each class and state the terms on which each class is to be issued. Preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof at not less than par (Sec. 18). Dividends on preferred stock may be fixed at any rate not exceeding 8 per cent. per annum. Special voting powers may be given to the holders of any class of stock. For a description of some of the kinds of preferred stock which may be created, see notes to Section 18, *post*.

It would appear at first sight that there is no express language in this section or in Section 18 which requires the certificate of incorporation to fix the authorized amount of preferred capital as distinguished from the common stock. Nevertheless the Secretary of State of New Jersey has made a ruling, based upon the opinion of a former Attorney-General, that it is an implied requirement of the statute that the certificate of incorporation shall separate the authorized capital into common and preferred, fixing the amounts of each. See also note to form.

As to the meaning of the term "capital stock," see *Goodnow v. American Writing Paper Co.*, 73 N. J. Eq., 692; *Wetherbee v. Baker*, 35 N. J. Eq., 501.

V. Names and post office addresses of incorporators.

There must be at least three incorporators, who must be natural persons. It is not necessary that any of them should be a resident of New Jersey. *Central R. R. Co. of N. J. v. Penn. R. R. Co.*, 31 N. J. Eq., 475.

This section is subject to the operation of Chapter 173 of the Laws of 1898, Section 43a, *post*, which provides that the post office address of the principal office of the company may be given as the post office address of the stockholder in any certificate filed.

VI. Duration.

Existence, if not limited in the certificate of incorporation, is perpetual. Section 10 provides that corporate existence begins on filing the certificate in the office of the Secretary of State. A corporation may continue its existence indefinitely by proper proceedings. *M. Redgrave Co. v. Redgrave*, 71 Atl. Rep., 147.

Formerly the maximum period of existence was fifty years.
See Sections 27, 119.

VII. Additional powers.

The words "creating" and "defining" are new, and carry to its logical result the principle laid down in *Ellerman v. Chicago Junction*

Rys., &c., Co., 49 N. J. Eq., 217, that the certificate of incorporation is equivalent to a special act of the Legislature.

This practically puts it in the power of the incorporators to decide for themselves the powers which the corporation shall have in addition to the powers expressly given by the act, and is in effect a delegation to them of the lawmaking power of the Legislature.

This provision may also be construed as meaning that whereas incorporators are enabled to create and define the powers which the corporation shall possess, in addition to those given by Section 1, that the certificate of incorporation shall then become the measure of the company's powers, and that powers not expressly or impliedly given by it are excluded.

Although the words "creating, defining, limiting and regulating the powers of directors" are broad and elastic, they do not give a corporation power, by its certificate, to permit the board of directors to act otherwise than as a united body. A method of corporate action which the law does not recognize cannot thus be created. *Audenried v. East Coast Milling Co.*, 68 N. J. Eq., 450.

A provision in the certificate of incorporation that the registered holder of stock shall be liable for calls for the amount unpaid is not inconsistent with the statute, and one who had sold his stock at the time the assessment was made, but who had not surrendered his certificate or informed the company of the name of the vendee, is liable for the assessment. *Brown v. Morton*, 71 N. J. Law, 26.

The simple statement in affirmative language of the matters required by the Corporation Act to be contained in the certificate of incorporation of a company does not amount to such a limitation upon the future action of its stockholders as will prevent a change in the purposes of the corporation by the consent of two-thirds in interest of the stockholders under the same act. *Meredith v. N. J. Zinc & Iron Co.*, 59 N. J. Eq., 257; *aff'd* 60 *Id.*, 445.

As to the power of a corporation to enter into a partnership, see *Oscillating Carousal Co. v. McCool*, 35 Atl. Rep., 582, and *Fechteler v. Palm Brothers & Co.*, 133 Fed. Rep., 462.

Various limitations and regulations of the powers of the corporation, the stockholders and the directors may be made; power may be given to the directors to make and alter by-laws (Sec. 11); directors may be classified (Sec. 12); power exclusively to choose a class of directors may be conferred on any class of stockholders (Sec. 12); the amount of interest required to be represented at any meeting, and at the annual election of directors to constitute a quorum, may be prescribed, provided it is not more than a majority of shares (Sec. 17); power to the directors to sell or mortgage any or all of the corporate property without the assent of the stockholders or with the assent of a majority or two-thirds of the stockholders; restrictions on the power of stockholders to examine the corporate books of account; voting

qualifications may be provided—for example, that each stockholder shall have a certain number of shares of stock to entitle him to one vote (Sec. 17). Other similar limitations and regulations might be made.

Under Section 17 as amended in 1901 a provision may be inserted in the certificate of incorporation that any action which now requires the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or requires their consent in writing to be filed, may be taken upon the consent of and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy. See note to Section 17.

Similar statute construed.

Section 1105a of the Code of Virginia provides that the certificate of incorporation may contain: “Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation; and any provision creating, defining or limiting or regulating the powers of the corporation, of the directors, or of the stockholders, or of any class or classes of stockholders; provided such provision be not inconsistent with this act.”

In a case involving the above statute of Virginia it was held, that a provision in the charter of a corporation that until a certain date the stockholders should have no right to vote or to participate in the control or management of the corporation or its affairs, but such control should be vested solely in the directors, who should have power to do any act which the stockholders might do in the absence of such provision, was valid, and not in conflict with further provisions of the act relating to meetings of stockholders, their powers, etc., which apply only to corporations whose charters do not otherwise provide. *Union Trust Co. of Maryland v. Carter*, 139 Fed. Rep., 717.

Cumulative voting.

Under Chapter 172 of the Laws of 1900 provision may be made in the certificate of incorporation for cumulative voting. Sec. 35a, post.

9. Authentication and record of certificate. Copy evidence.

The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and recorded in a book to be kept for that purpose in the office of the clerk of the county where the principal office of such corporation in this state shall be

established, and, after being so recorded, shall be filed in the office of the secretary of state; said certificate or a copy thereof duly certified by the secretary of state, shall be evidence in all courts and places.

P. L. 1846, p. 65; P. L. 1849, p. 301; Act of 1875, §12.

Within the State of New Jersey the acknowledgment may be taken by the Chancellor, a justice of the Supreme Court, any attorney-at-law admitted to practice by the Supreme Court, a Master in Chancery, a judge of any Court of Common Pleas, a Commissioner of Deeds, a Clerk of the Court of Common Pleas of any county, a Deputy County Clerk, a Surrogate or Deputy Surrogate of any county, or a Register of Deeds of any county. "An Act respecting conveyances (Revision of 1898)," §22, P. L. 1898, pp. 670, 678, as amended by Chap. 247, Laws of 1906, p. 524.

All acknowledgments must be in the form prescribed by the New Jersey statute.¹

A New Jersey Notary Public has no authority to take an acknowledgment.

Acknowledgments out of New Jersey should, if practicable, be taken by a Master in Chancery of New Jersey or by a Foreign Commissioner of Deeds for New Jersey authorized to act in the place where the acknowledgment is taken. If a Master in Chancery or Commissioner is not available, the acknowledgment may be taken by a Notary Public or other officer, but in such case it is necessary to attach to the certificate of acknowledgment a certificate of the County Clerk or other officer performing similar duties, substantially as follows ("An Act respecting conveyances [Revision of 1898]," §23):

State of _____ } ss.
County of _____ }
I, _____ Clerk of the County of _____,
and also Clerk of the _____ Court for the said County,
the same being a Court of Record, do hereby certify, That
_____, whose name is subscribed to the Certificate of the proof or
acknowledgment of the annexed instrument, and thereon written, was,
at the time of taking such proof and acknowledgment, a Notary Public
in and for said County, duly commissioned and sworn, and authorized
by the laws of said State to take the acknowledgments and proofs of
deeds or conveyances for lands, tenements or hereditaments in said
State of _____. And further, that I am well acquainted
with the handwriting of such Notary Public, and verily believe that

¹ Precedents, Acknowledgment, p. 350. Subscribing Witness, p. 350.

[illegible]

The omission of an immaterial part of the acknowledgment by an incorporator, as a failure to state that the contents of the certificate were made known to him and the omission of a certificate of notaryship to state that the notary was authorized by the laws of his state to take acknowledgments and proof of deeds, do not render the incorporators liable as partners. *Stout v. Zulick*, 48 N. J. Law, 599. See also *Keyes v. Smith*, 51 Atl. Rep., 122.

Upon making the certificate of incorporation and causing the same to be recorded and filed as aforesaid, the persons so associating, their successors and assigns, shall, from the date of such filing, be and constitute a body corporate by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

This section of the Revision is a substitution for Section 13 of the Act of 1875, which provided that the incorporators might insert the time when the company would begin business. The case of *Vanneman v. Young*, 52 N. J. Law, 403, is often cited as authority for the proposition that a corporation may begin business before the filing and recording of its certificate in the office of the Secretary of State, but Section 10 settles the law on this point.

De facto corporations.

The law on this subject is stated in *Stout v. Zulick*, 48 N. J. Law, 599, 601: "In the absence of a statutory provision making shareholders liable in case of failure to comply with the requirements of the

charter, or with requirements of the act under which the company is incorporated, persons who have contracted with a de facto corporation, as a corporation, cannot deny its corporate existence in order to charge its shareholders individually as partners. * * * Where it is shown that there is a charter or a law under which a corporation with the powers assumed might lawfully be incorporated, and there is a colorable compliance with the requirements of the charter or law and a user of the rights claimed under the charter or law, the existence of a corporation is established.

“And it is entirely settled that the corporate existence of such corporation de facto cannot be inquired into collaterally. It is, as to all who contract with it, to be assumed to be a corporation de jure. The legality of its corporate existence may be inquired into only by the state. This is as true where the corporation is formed under a general law as under a special charter. * * * Had this suit been brought against the company it could not have denied its corporate existence, neither can the plaintiffs, who contracted with it as a corporation, do so.” See also *Att’y-General v. Stevens*, 1 N. J. Eq., 369; *Hackensack Water Co. v. De Kay*, 36 N. J. Eq., 548; *Rafferty, Rec’r, v. Bank of Jersey City*, 33 N. J. Law, 368; *Vanneman v. Young*, 52 N. J. Law, 403; *Stockton v. American Tobacco Co.*, 55 N. J. Eq., 352; *aff’d* 56 Id., 847; *MacMillan Co. v. Stewart*, 69 N. J. Law, 212; *aff’d* Id., 676.

A court of equity is not the proper tribunal to inquire into the validity of such organization. The action must be brought in a court of law, on quo warranto, or information in the nature of quo warranto, by the Attorney-General in behalf of the state. See cases cited, p. 37.

Where rights of third persons have arisen by reason of the acts of a corporation, de facto, such corporation cannot be dissolved by any agreement or act of the incorporators, so as to affect such rights. *McCarter v. Ketcham*, 72 N. J. Law, 247; *s. c.* 74 N. J. Law, 825, 829.

As to the right of one contributing toward the formation of a corporation, not in fact effected, see *Sherwin v. Sternberg*, 71 Atl. Rep., 117; *aff’d* 74 Atl. Rep., 510.

One who enters into a written contract purporting to be made with a corporation, is not estopped, where there is no colorable organization of a de facto corporation, from showing that the individuals with whom he dealt were trading under the corporate name. *Cottentin v. Meyer*, 76 Atl. Rep., 341.

A subscriber is liable on his stock although the corporation be only de facto. *McCarter v. Ketcham*, *supra*.

Nature of corporate existence.

A corporation, although an artificial person existing only in legal contemplation, may act per se through its officers as a natural person. *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721.

A corporation has a distinct legal existence as a person. Service

on a designated officer brings the corporation and not the individual into court. *Apperson v. Insurance Co.*, 38 N. J. Law, 272.

The fact that two individuals who own practically all the stock of a corporation treat the corporation as a mere agency in carrying out a partnership agreement, ignoring corporate forms, does not give a court of equity power to take the corporate property under its control as upon the dissolution of a copartnership. The rights of the parties must be administered as shareholders in a corporation. *Jackson v. Hooper*, 76 N. J. Eq., 592.

10a.* Certificates and other corporate papers to be recorded.

It shall be the duty of the secretary of state to record in books for that purpose, all certificates and other papers relating to and in any way affecting corporations, now on file in his office and such as are required by any law of this state to be filed therein, excepting annual reports; such recording to be done upon typewriter with record ribbon of permanent color, on paper of approved durability; such records to be kept in a vault separate and away from the vault or place wherein the originals are filed; for this service the secretary of state shall, at the time of the filing of each certificate or other paper, charge a fee of ten cents per folio of one hundred words (with a minimum charge of one dollar), for the use of the state.

“An Act respecting the recording of certificates and other papers relating to and affecting corporations,” approved March 28, 1904; P. L. 1904, p. 282.

11. By-laws.

The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the

*Arbitrary number. Section inserted here merely for convenient reference.

directors; by-laws made by the directors under power so conferred may be altered or repealed by the stockholders.

Act of 1875, §45.

Whether the stockholders may exercise the power conferred by this section at an annual meeting in the absence of notice, does not seem to have been decided. It is therefore advisable in most cases to provide in the by-laws expressly for this.

The power of the corporation cannot be enlarged by a by-law. *Stewart v. Odd Fellows' Mutual Life Ins. Co.*, 12 N. J. L. J., 110.

The powers of the stockholders to amend the by-laws cannot be curtailed by a delegation of such power to the directors. In *re A. A. Griffing Iron Co.*, 63 N. J. Law, 168; *aff'd Id.*, 357.

Construction.

A provision in the by-laws of a corporation that at special meetings of the stockholders questions should be determined by the vote of a "majority of stockholders" was construed to mean a majority in interest of the stockholders, the by-laws providing that all questions as to elections should be governed by the Corporation Act of 1896. *Weinburgh v. Union Street Railway Advertising Co.*, 55 N. J. Eq., 640.

The right of a stockholder to inspect the books of a corporation cannot be limited or prohibited by a by-law or provision in the certificate of incorporation. *Hodgens v. United Copper Company*, 67 Atl. Rep., 756.

For further cases as to by-laws see notes to Section 1.

12. Directors; Classes of; Voting for, how restricted.

12. The business of every corporation shall be managed by its directors, who shall respectively be shareholders therein; they shall be not less than three in number, and, except as hereinafter provided, they shall be chosen annually by the stockholders at the time and place† provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, any corporation organized

†The place must be the registered office of the company in New Jersey. (Sec. 44.)

under this act may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided, that no class shall be elected for a shorter period than one year or for a longer period than five years, and that the term of office of at least one class shall expire in each year; any corporation which shall have more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of any class or classes, to the exclusion of the others; one director of every corporation in this state shall be an actual resident of this state, and it shall not be necessary for more than one director to be a resident of this state, notwithstanding the provisions of any special charter or other act.

P. L. 1846, pp. 65, 66; P. L. 1849, p. 302; P. L. 1872, p. 89; Act of 1875, §16; P. L. 1881, p. 122; P. L. 1889, p. 413; P. L. 1892, p. 90; P. L. 1893, p. 444.

Unless the certificate of incorporation contains limitations upon the powers of the directors, the executive power of the corporation is vested in the board of directors. The court said in *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440:

“In this connection it is worthy of remark that the stockholders, as such, have no power to make any contract or execute any work. Their power is confined to electing directors and advising them in their conduct of the business of the company.”

The purely discretionary powers of a board of directors of a corporation concerning its internal affairs, fairly and honestly exercised, are not reviewable or controllable by a court of law or equity. *Sigman v. Electric Vehicle Co.*, 140 Fed. Rep., 117.

But acts of a corporation which are *ultra vires* do not come within this rule. *Id.*, 72 N. J. Eq., 403.

An agreement by which a corporation surrenders the management and control of its affairs and business to another corporation is *ultra vires*. The purpose of a grant of power as contained in this section is that the corporation shall exercise its powers and carry on its business through its own officers and agents. *Holt v. California Development Co.*, 161 Fed. Rep., 3.

Liabilities of directors who do not direct.

For an article collating the authorities on this subject, see "The Bench and Bar," Vol. 18, p. 100. *Kavanaugh v. Commonwealth Trust Co.*, 64 Misc. (N. Y.), 303.

A provision by which the directors of a corporation abdicate their duty of management and turn it over to an alien body is in direct violation of the words and meaning of the statute. *McCarter, Attorney-General, v. Firemen's Insurance Co.*, 73 Atl. Rep., 80, at p. 85.

In *Plaquemines Tropical Fruit Co. v. Buck*, 52 N. J. Eq., 219, at p. 238, the court said:

"It may sometimes become necessary in the transaction of the business of a corporation to have the consent of all the stockholders, or of a certain proportion of them, and resolutions giving such consent have the effect of empowering the directors to act. But the board of directors is the legal executive, recognized as such, not only in practice and on principle, but by statute."

"If stockholders in a corporation disapprove of the company's management, conducted without fraud or gross abuse of trust, or consider their speculation a bad one, their remedy is to elect new officers or sell their shares and withdraw." *Benedict v. Columbus Construction Co.*, 49 N. J. Eq., 23.

"Individual stockholders cannot question, in judicial proceedings, corporate acts of directors if the same are within the powers of the corporation, and, in furtherance of its purposes, are not unlawful or against good morals, and are done in good faith and in the exercise of an honest judgment. Questions of policy of management, of expediency of contracts or action, of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds, are left solely to the honest decision of the directors if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in the place of those determined on by the scheme of incorporation." *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217, 232. See also *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620; *Hunt v. American Grocery Co.*, 80 Fed. Rep., 70. See *Booth v. Land Filling & Imp. Co.*, 68 N. J. Eq., 536.

It is repugnant to the well-settled judicial policy of this state to permit the continuance in control, directly or indirectly, of directors or officers of a corporation against whom is made out a prima facie case of malfeasance in office, or who appear under the proofs to have used their official positions to their own advantage and to the resulting injury of the corporation and its shareholders. *Fitzgerald v. State Mutual Building & Loan Ass'n*, 69 Atl. Rep., 564. See also *Michigan Law Review*, Vol. 7, p. 53.

An agreement between shareholders controlling the stock of a corporation that certain directors shall act as dummies subservient

to the will of the parties is illegal and cannot be enforced in a court of equity. *Jackson v. Hooper*, 75 Atl. Rep., 568.

In a suit by a receiver of a corporation against non-resident directors to recover money lost by their negligence, the court acquired no jurisdiction in personam by service by publication and mailing. *Lanning v. Twining*, 64 Atl. Rep., 466.

Directors must act as a board.

A single director has no power merely by virtue of his office. For any power he undertakes to exercise he must get authority from the board. *Titus v. Cairo & Fulton R. R. Co.*, 37 N. J. Law, 98. See *Demarest v. Spiral Riveted Tube Co.*, 71 N. J. Law, 14; *Audenried v. East Coast Milling Co.*, 68 N. J. Eq., 450; *Clement v. Young-McShea Amusement Co.*, 70 N. J. Eq., 677.

A majority of the directors of a corporation, in the absence of any regulation in the charter, is a quorum, and a majority of such quorum when convened can do any act within the power of the directors. *Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402; *Metropolitan Telephone Co. v. Domestic Telegraph Co.*, 44 N. J. Eq., 568; *Cadmus v. Farr*, 47 N. J. Law, 208.

Stockholders may not waive a method of corporate action which is provided by law, neither can they dispense with proper action by the board of directors. *Audenried v. East Coast Milling Co.*, 68 N. J. Eq., 450, 468.

And a provision in the certificate of incorporation that the directors may act by a resolution signed by all without a vote at a duly called meeting amounts to legislation by the corporation, and is therefore invalid. Nor is it sustained by Section 8, subdivision 7, of the General Corporation Act. *Id.*

A resolution by the board of directors, giving authority to take a deed of property on which the corporation holds a mortgage, may be valid although not recorded in the minutes. *McMichael v. Brennan*, 31 N. J. Eq., 496.

The validity of resolutions attacked in a suit must be determined by the laws of the state of incorporation. *Central Consumers' Wine and Liquor Co. v. Madden*, 68 Atl. Rep., 777.

Minutes of board of directors as evidence of contract. *Fleming v. Reed*, 77 N. J. Law, 563.

A board of directors is not chargeable where one of the directors acts without either the knowledge or the authority of the board. *Lanning v. Johnson*, 69 Atl. Rep., 490.

An injunction against the persons who compose the board of directors of a corporation enjoining them individually in respect to corporate affairs, is an injunction against the corporation. *Jackson v. Hooper*, 76 N. J. Eq., 592.

Ratification by directors.

Where the president of a corporation communicates his action in making a contract to the corporation to the board of directors, if the board does not disaffirm the act it will be presumed to have ratified. *Indianapolis Rolling Mill Co. v. St. Louis Ry. Co.*, 120 U. S., 256.

But knowledge of at least a majority of the directors must precede acquiescence. *Lister Agr. Chemical Works v. Selby*, 68 N. J. Eq., 271.

See also cases cited under Ratification of Acts of Officers, p. 63.

Contracts by directors with corporation.

An express contract between a director and the corporation is not void, but voidable, to be avoided at the option of the corporation, exercised within a reasonable time. In *Stewart v. Lehigh Valley R. R. Co.*, 38 N. J. Law, 505, at 522, the court said: "The vice which inheres in the judgment of a judge in his own cause contaminates the contract; the mind of the director, or trustee, is the forum in which he and his cestui que trust are urging their rival claims, and when his opposing litigant appeals from the judgment there pronounced, that judgment must fall. It matters not that the contract seems a fair one. Fraud is too cunning and evasive for courts to establish a rule that invites its presence * * * nor is it proper for one of a board of directors to support his contract with his company upon the ground that he abstained from participating as director in the negotiation for and final adoption of the bargain by his co-directors; the very words in which he asserts his right declare the wrong; he ought to have participated, and in the interest of the stockholders, and if he did not, as they have thereby suffered loss, of which they shall be the judges, he must restore the rights he has obtained—he must hold against them no advantage that he has got through neglect of his duty toward them." Likewise *Guild, Ex'r, v. Parker, Rec'r*, 43 N. J. Law, 430; *Elkins v. Camden & Atl. R. R. Co.*, 36 N. J. Eq., 467, at 470; *Gardner v. Butler*, 30 N. J. Eq., 702; *Stroud v. Consumers Water Co.*, 56 N. J. Law, 422, 427; *Hickman v. Hickman Hose Co.*, 13 N. J. L. J., 111.

Where directors award corporate contracts to themselves the contract is voidable at option of dissenting stockholders and the directors have the burden of proof. *Booth v. Land Filling and Imp. Co.*, 68 N. J. Eq., 536.

Directors cannot lawfully enter into a contract, in the benefit of which every one participates, without the knowledge and consent of the stockholders. *Mitchell v. United Box, Board & Paper Co.*, 72 N. J. Eq., 580; *U. S. Steel Corporation v. Hodge*, 64 N. J. Eq., 807.

And the directors may be compelled to account for unlawful profits made by such contracts. *Barry v. Moeller*, 68 N. J. Eq., 483.

The contract is not void per se, but may be ratified by the stockholders either by action or by acquiescence. *U. S. Steel Corporation*

v. Hodge, 64 N. J. Eq., 807; Oliver v. Rahway Ice Co., 64 N. J. Eq., 596.

But the case of Twin-Lick Oil Co. v. Marbury, 91 U. S., 587, admitting the general doctrine to be that contracts of this sort are voidable at the option of the corporation or its stockholders, makes an exception when a director in absolute good faith loans money to a failing corporation and later buys the property from the trustee at a fair and open sale and at a reasonable price.

The same rule was applied in Barr v. Pittsburg Plate Glass Co., 57 Fed. Rep., 86.

Where bonds are not readily marketable and a creditor purchases them at a price lower than the face value, but not unconscionable, a director may purchase of the creditor at market value and recover the face value, provided there is no fraud in the transaction. Camden Trust Co. v. Citizens' Cold Storage Co., 69 N. J. Eq., 718; aff'd 71 Id., 221.

A special committee of the board of directors of a private corporation being empowered by the board to contract for the sale of the shares of stock in another company owned by the corporation, stipulated in the contract which they made that the members of the committee should personally have an option to deliver their own shares in the same company to the same vendee at the same price. Other stockholders of the corporation also owned shares in the same company, but no such option was secured for them. Held, that the court would not decree specific performance against the objection of the corporation and its stockholders. Kelsey v. New England St. Ry. Co. et al., 60 N. J. Eq., 230.

Compensation of directors.

The contract for compensation of a director, like any other contract made by the board in which a director is personally interested, is a contract which is voidable but not void, and may therefore be ratified. Such contracts are voidable, however, as against the company, considered as composed of the whole body of stockholders, not voidable against each stockholder in his own individual right, and the general rules established as to affirming or ratifying such voidable contracts are (1) that the stockholders, as a body, may, by a majority vote, ratify the contract, and (2) that as the individual stockholders are not trustees for each other, the director whose contract is in question may vote as a stockholder on the ratification, and that the ratification is valid, even if his vote is necessary to make the majority. Lillard v. Oil, Paint and Drug Co., 70 N. J. Eq., 205; Lawton v. Bedell, 71 Atl. Rep., 490.

Although an express contract may be without legal force, the directors of a company have a right to serve the company as officers and to recover a just and reasonable compensation for such services.

Such claims are enforceable on the basis of quantum meruit. *Gardner v. Butler*, 30 N. J. Eq., 702, 721; *Porch v. Agnew Co.*, 70 N. J. Eq., 328; *aff'd* 71 Id., 305.

Equity may set aside a resolution granting excessive salaries. *Laurel Springs Land Co. v. Fougeray*, 50 N. J. Eq., 756; *Modified* 57 N. J. Eq., 318.

In case of insolvency of a corporation, the president is not entitled to the preference given by statute to laborers and employees for wages. *England's Exrs. v. Beatty Organ Co.*, 41 N. J. Eq., 470.

But a bookkeeper, even though he be a director, is entitled to the statutory preference. *Consolidated Coal Co. v. Keystone Co.*, 54 N. J. Eq., 309.

An agreement among incorporators that they shall receive stock remaining after paying for certain patent rights, does not preclude recovery for services rendered by them as employees. *Wiltbank v. Automatic Amusement Co.*, 69 N. J. Law, 236.

Officers are liable to the receiver for excessive salaries paid out of the capital. *Mills v. Hendershot*, 70 N. J. Eq., 258, 265.

When directors fix the value of their own services and their action is challenged, the burden is upon them to show that they have earned the amount fixed. *Davis v. Thomas & Davis Co.*, 63 N. J. Eq., 572.

But the contract of directors fixing their own salaries, like any other contract, may be ratified by the stockholders. *U. S. Steel Corporation v. Hodge*, 64 N. J. Eq., 807.

Where officers vote themselves increased salaries while pursuing a line of expansion, to the exclusion of dividends on stock, a court of equity has power to compel a restoration of the amounts so withdrawn. *Raynolds v. Diamond Mills Paper Co.*, 69 N. J. Eq., 299.

"Where directors of a corporation attempt to deal with themselves, their acts are the subject of judicial inquiry and supervision. Directors cannot fix the value of their own services to the corporation. Whenever they attempt to do so and their action is challenged by a stockholder or other interested person, the burden is upon them to show what they have done to merit payment, and the quantity of compensation to which they are entitled is to be graded, not by the sum voted, but by what they earn." *Davis v. Thomas A. Davis Co.*, 63 N. J. Eq., 572.

The rule that directors are not trustees to the extent that they are liable to creditors for the negligent management of the ordinary business of the corporation, has no application where the mismanagement consists in diverting the assets of the company for their own benefit or for a company in which they are the sole stockholders. *Hayes v. Pierson*, 65 N. J. Eq., 353.

Stockholders of a going concern and creditors of an insolvent company may question contracts for services of directors in managing

the affairs of the company. Such contracts are subject to judicial review. *Mitchell v. United Box, Board & Paper Co.*, 72 N. J. Eq., 580.

Advances made by directors to the corporation may be secured and property sold to them to satisfy the same, provided the price is a fair one. *Mitchell v. United Box, Board & Paper Co.*, 72 N. J. Eq., 580.

Directors are answerable to the stockholders for negligence in permitting officers to appropriate corporate property. *Bird v. Magowan*, 43 Atl. Rep., 278.

A director is bound to know the condition of the books of the company. *Bird v. Magowan*, 43 Atl. Rep., 278.

The corporation or its stockholders must exercise the right to avoid a contract with a director within a reasonable time, dependent on the circumstances. *Stephany v. Marsden*, 71 Atl. Rep., 598.

This rule is for the benefit of the corporation, and as to others the contract is valid and enforceable. *Barnes v. Trenton Gas Light Co.*, 27 N. J. Eq., 33; *Stratton v. Allen*, 16 N. J. Eq., 229. So when the director of a bank, who was also a member of a firm, offered a note belonging to the firm to the bank, for discount, which was procured from the maker by fraud, of which he as a member of the firm had notice, it was held that the knowledge of the director was not constructive notice to the bank, such director not having acted with the board in making the discount and not having communicated his knowledge to any of the officers of the bank. He was regarded in the transaction as a stranger. *First Nat. Bank of Hightstown v. Christopher*, 40 N. J. Law, 435; see also *Sudbury v. Merchantville Building & Loan Association*, 57 N. J. Eq., 342, 345.

A director occupies a position of trust or agency, and dealings between himself and his company, when his interest is opposed to that of the company, will not be sustained against a stockholder unless consistent with good faith and fairness. But a director, who is at the same time a creditor of his corporation, may, for the purpose of collecting his debt, assume a position antagonistic to his company and its stockholders by bringing action and proceeding to judgment and execution for the recovery of the debt. But, on taking such proceedings, he must relinquish his trust *pro hac vice* openly and with fair notice to his company. Whether such notice should be given to the stockholders or to the directors may depend on circumstances. *Marr v. Marr*, 70 Atl. Rep., 375.

De facto directors.

In the absence of special restrictions in the charter or by-laws the general management of the corporation is in the hands of the directors, and the acts of a *de facto* board of directors bind the corporation. *Collier v. Consolidated Lighting Co.*, 70 N. J. Law, 313;

Hackensack Water Co. v. De Kay, 36 N. J. Eq., 548; *Kuser v. Wright*, 52 N. J. Eq., 825.

Disclosure to competent and independent directors is disclosure to the company. *Bigelow v. Old Dominion Copper Co.*, 71 Atl. Rep., 153.

Directors liable for special assessment.

Directors who consent are liable to the company on a special assessment which they levy on themselves, and consent may be inferred from acquiescence in the agreement. *Johnson v. Tenn. Oil Co.*, 74 N. J. Eq., 32.

The obligation on such an agreement is several, but if one of the directors is insolvent and fails to pay his proportion of an assessment, such amount may be recovered in equity from the other directors up to the amount of the special assessment agreed to by them. *Johnson v. Tenn. Oil Co.*, 73 Atl. Rep., 60.

Common directors.

The rule allowing stockholders to avoid contracts made with another corporation by common directors, applicable where the contract is made through the directors alone, is inapplicable to the action of directors in those statutory proceedings where the final action is that of the stockholders themselves, acting in their individual rights and according to their individual interests. *Bijur v. Standard Distilling & Distributing Co.*, 70 Atl. Rep., 934.

A director of two corporations which contract with each other is incapacitated to take part in settling the terms of the contract. *Metropolitan Telephone Co. v. Domestic Telegraph Co.*, 44 N. J. Eq., 568, 573.

Co-partners who secured for their firm manufactured articles from a manufacturing corporation of which they were directors at a price so low as to result in loss to such corporation, were held liable to the stockholders of the corporation of which they were directors for the loss and a reasonable profit on such sale. *Barry v. Moeller*, 68 N. J. Eq., 483.

How far self-interest of directors in contracts between corporations with common directors will vitiate the contract is not settled. The better rule seems to be that the mere presence of common directors does not give a minority stockholder the right to an injunction. At most it gives him the right to submit the transaction to the scrutiny of the court. To give the stockholder an arbitrary right in such cases would often lead to injustice and to the more reprehensible practice of "dummy" directors, behind whom the real act would be concealed. But where all the directors have a valuable interest in the action which they propose to take, a stockholder may compel them to prove before the court that such action is advantageous to the corporation. *Robotham v. Prudential Ins. Co.*, 64 N. J. Eq., 673, 710; *Pierce v. Old*

Dominion Copper Co., 67 N. J. Eq., 399, 429; 72 Id., 595; *aff'd* 70 Atl. Rep., 1101.

Sale by a corporation of its property to the directors or to a company controlled by them may be questioned in equity by a dissenting stockholder. It is not necessary to show actual fraud in the transaction. The sale may be held voidable on the ground of constructive fraud. *Mitchell v. United Box, Board & Paper Co.*, 72 N. J. Eq., 580.

Directors as Trustees for creditors.

Where the corporation is insolvent the directors are trustees for the creditors. See Section 64 and notes.

By statute, P. L. 1895, p. 166, Section 64 of this Act, corporations are prohibited from conveying or assigning any of their assets after they have become insolvent or suspended their ordinary business for want of funds to carry on the same. But even before the passage of this statute a board of directors of an insolvent company could not prefer one of its own members. "The weight of authority is in support of the wholesome rule that the directors of an insolvent corporation are trustees of its funds for its creditors; * * * by no act of such director can he obtain a position superior to that of the other creditors for whose benefit he holds the trust assets." *Montgomery v. Phillips*, 53 N. J. Eq., 203, 217; *Wilkinson v. Bauerle*, 41 N. J. Eq., 635; *Savage v. Miller*, 56 N. J. Eq., 432.

"Equity regards the property of a corporation as a fund held in trust for the payment of its debts, and if other than bona fide creditors of the corporation, or purchasers, possess themselves of it, they take it charged with this trust, which a court of equity will enforce against them. This is now a well-recognized rule of equity jurisprudence." *National Trust Co. v. Miller*, 33 N. J. Eq., 155, 163.

"The directors of an incorporated company cannot speculate with the funds or credit of the company, and appropriate to themselves the profits of such speculations. If they are the only persons interested as stockholders, yet, if such speculations impair the capital stock, and have a tendency to substitute a fictitious for a real value, such transactions are opposed to the policy of their act of incorporation, and cannot, in any manner, be countenanced by a court of equity." *Redmond v. Dickerson et al.*, 9 N. J. Eq., 507, 516.

A contract by the directors to promote another corporation in another state, for the furtherance of the interests of their company, and to take a majority of its stock, held not to be ultra vires. *Rubino v. Pressed Steel Car Co.*, 53 Atl. Rep., 1050.

As to powers of the directors of a defunct corporation, see *In re Delaware River & Atlantic Ry. Co.*, 76 N. J. Law, 163.

Qualification of directors.

See note to Section 39.

Resignation of director.

A director of an ordinary business corporation can resign orally or in writing, unless there is some provision to the contrary in the charter or by-laws. *Fearing v. Glenn*, 73 Fed. Rep., 116. A written resignation takes effect on delivery to the president; acceptance by the board is not necessary. *International Bank v. Faber*, 86 Fed. Rep., 443.

Annual elections.

“That provision of the charter, which declares that annual meetings of the stockholders shall be held for the election of directors, grants to the stockholders a highly important and valuable right, which the directors can neither defeat nor impair. * * * The right, therefore, to change the day for the annual meeting is one which, from its very nature, can alone be exercised by the stockholders. No board of directors can, without the stockholders’ consent, hold office for a period longer than one year. *Elkins v. Camden & Atl. R. R. Co.*, 36 N. J. Eq., 467; *Archer v. American Water Works Co.*, 50 N. J. Eq., 33.

Any action by the directors of a corporation, which is designed to retain themselves in office, and thus perpetuate their control over the affairs of the corporation, against the will of the holders of a majority of the stock, is illegal and void, and the injured stockholders, in such a case, are entitled to relief by injunction. *Hilles v. Parish*, 14 N. J. Eq., 380. See *O’Connor v. International Silver Co.*, 68 N. J. Eq., 67; *aff’d, Id.*, 680.

For further cases as to elections, see notes to §§34, 36 and 42.

Classification of directors.

The classification provided for by the statute is twofold:

1. Classification by terms, the effect of which is to continue the directors in office for a longer term than one year and to cause the board to rotate in classes, so that in no one year can the personnel of the entire board be changed.

2. Classification by stock, by which one class of stock elects exclusively a certain number of directors. Thus it is possible to place the control of the company, to the extent of electing a majority of the directors, in any class of the stockholders, whether that class be a majority or a minority of the whole stock.

Either classification may be used without the other, or both may be combined.

Executive committee.

The courts are inclined to relax the rigor of the general rule and to recognize the power of directors to delegate current and ordinary business to a committee or committees. That is now not an uncommon

practice among business corporations. *Metropolitan Telephone Co. v. Domestic Telegraph Co.*, 44 N. J. Eq., 568.

As to the ratification by the stockholders of the acts of a special committee appointed by the directors, see *Kelsey v. New England Street Railway Co.*, 60 N. J. Eq., 230.

See also *Canada-Atlantic & Plant S. S. Co. v. Flanders*, 145 Fed. Rep., 875.

It has been held in New York that a board of twenty-three directors may delegate to a "quorum of any five of their number authority to transact all ordinary business." *Hoyt v. Thompson's Executor*, 19 N. Y., 207. Also, that the board of directors may appoint an executive committee of its own members with power to transact corporate business during the intervals between the meetings of the board. *Olcott v. Tioga R. R. Co.*, 27 N. Y., 546; *Sheridan Elec. Lt. Co. v. Chatham Nat. Bk.*, 127 N. Y., 517; *First Nat. Bk. v. Com'l Travelers' Home Assn.*, 108 App. Div., 78; *aff'd* 185 N. Y., 575; *Com'l Wood & Cement Co. v. Northampton Portland Cement Co.*, 190 N. Y., 1.

Provision should be made in the certificate of incorporation for the appointment of an executive committee and its powers.

Such provision is sometimes made in the by-laws.

13. Officers.

Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

P. L. 1846, p. 66; P. L. 1849, p. 302; Act of 1875, §§17, 18.

Powers of officers.

When a corporation does not go outside of its corporate machinery to perform a corporate act, but acts through its own administrative

officers, its inherent agencies, it is acting *per se* and not *per alium*. This distinction is not merely verbal, and hence trivial, but, on the contrary, marks the wide difference that exists between acting for oneself by an inherent faculty and the employment of another person to act for one and in one's stead. The right of an artificial person to empower and employ agents or attorneys is identical with that of a natural person—each is governed alike by the law of principal and agent. *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721.

But the powers of the officers of a corporation are strictly those of agents—powers either conferred by the charter or by-laws or delegated to them by the directors or managers. *Fifth Ward Savings Bank v. The First Nat'l Bank*, 48 N. J. Law, 513, 525; *Stokes v. N. J. Pottery Co.*, 46 N. J. Law, 237.

Officers are presumed to have authority to perform duties which such officers ordinarily perform in similar corporations. *Mutual Life Ins. Co. v. 42d St. B. R. Co.*, 74 Hun (N. Y.), 505.

Persons dealing with an officer of a corporation, who assumes to act for it in matters in which the interests of the corporation and such officer are adverse, is put upon inquiry as to the authority and good faith of the officer. *McCloskey v. Goldman*, 62 Misc. (N. Y.), 466; *Moore v. Citizens' Nat. Bk.*, 111 U. S., 156.

The doctrine that a corporation may act only by a resolution of its board and under its corporate seal, has long been abandoned. In the conduct of its ordinary business a corporation acts by its agents, who may be appointed without formal action of its board, and not even in writing. *American Insurance Co. v. Oakley*, 9 Paige (N. Y.), 496. A corporation may be bound by acceptance and ratification of previously unauthorized acts of its agent, even when in the course of his principal's business he perpetrates a fraud. *Garrison v. Technic Electrical Co.*, 55 N. J. Eq., 708; *Flaherty v. Atlantic Lumber Co.*, 58 N. J. Eq., 467, 473; see also *Bennett v. Millville Imp. Co.*, 67 N. J. Law, 320.

When an officer is clothed with apparent authority, although not inherent in his office, the general doctrine of agency applies, and the corporation may be liable for his acts. The authority of the officer does not depend so much on his title, or on the theoretical nature of his office, as on the duties he is in the habit of performing. *Fifth Ward Savings Bank v. First Nat'l Bank*, 48 N. J. Law, 513, 525; see also *Blake v. Domestic Mfg. Co.*, 64 N. J. Eq., 480; *Keen v. Maple Shade Land & Imp. Co.*, 63 N. J. Eq., 321; *Kirkpatrick v. Eastern Milling & Export Co.*, 135 Fed. Rep., 146; *aff'd* 137 Id., 387; *Kelly v. Jersey City Water Supply Co.*, 74 N. J. Law, 734; *Crossley v. St. Philip Neri*, 74 N. J. Law, 653.

A director, though owning a majority of the stock of a corporation, has no authority, as director, to act for the corporation, except as a member of the board of directors. *Clement v. Young-McShea Amuse-*

ment Co., 70 N. J. Eq., 677. The rule is the same in New York even if the director owned all the stock. *Buffalo Loan, Trust & Safe Deposit Co. v. Medina Gas & Elec. Lt. Co.*, 162 N. Y., 67; *Palmer v. Ring*, 113 App. Div., 643; *Saranac & Lake Placid R. R. Co. v. Arnold*, 167 N. Y., 368.

As to acts of an extraordinary nature, an officer must have express authority from the board of directors. He cannot confess judgment against the company. *Stokes v. N. J. Pottery Co.*, 46 N. J. Law, 237. Nor has he power to execute a cognovit. *Raub v. Blairstown Creamery Ass'n*, 56 N. J. Law, 262. See also *Lister Agricultural Chemical Works v. Selby*, 68 N. J. Eq., 271.

The doctrine adopted by the Court of Errors and Appeals as to when a corporation is charged with notice from its agent's knowledge is stated in *Sooy v. State*, 41 N. J. Law, 394: "The knowledge of the agent is chargeable upon his principal whenever the principal, if acting for himself, would have received notice of the matters known to the agent." See *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq., 387, at 400; s. c., 73 Atl. Rep., 603. But knowledge of an agent or officer should not be imputed to the corporation for the purpose of establishing fraud on its part. *Ibid.* See also *Bank v. Christopher*, 40 N. J. Law, 435; *Canada Mfg. Co. v. Woodbridge*, 58 N. J. Law, 134; *Lanning v. Johnson*, 75 N. J. Law, 259.

The question of the authority to sign an affidavit, either where the corporation is a party to the suit or where there is a statutory requirement upon the corporation to make an affidavit, as in the case of a deed of trust covering personalty or chattel mortgage, is a very different question and is governed by different rules. See *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721; 16 L. R. A. (N. S.), 703, and cases cited. See also *Michigan Law Review*, Vol. 6, p. 692.

The officers may issue new bonds without authorization of the directors where the issue has been duly authorized and the new bonds are intended merely to remedy a defect in the original issue, and thus to express the real intention of the parties. *Bergen v. Rogers*, 67 Atl. Rep., 290; *aff'd.*, 70 Id. 1100.

A false statement by officers of a corporation, on selling shares of its stock, that none had been sold for less than par, is a material misrepresentation authorizing rescission. The affidavit of consideration required by the chattel mortgage act may be made in behalf of the corporation by an officer acting under its authority and possessed of the requisite knowledge to make such affidavit. In legal contemplation such an affidavit is the corporate act and not that of an agent or attorney. *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721; 16 L. R. A. (N. S.), 703; *Michigan Law Review*, Vol. 6, p. 692.

One who receives from a corporate officer the corporation's promissory note in payment of, or as security for, a personal debt of such

officer, does so at his peril. Unless the act is authorized the note is void. *Louis De Jonge & Co. v. Woodport Hotel, &c., Co.*, 77 N. J. Law, 233.

Knowledge imputed to corporation.

The rule of agency that the knowledge of an agent is imputable to his principal, when such information relates to the business which the agent is carrying on for the principal, applies to corporations and their agents. *Camden Safe Deposit Co. v. Lord*, 67 N. J. Eq., 489.

Where an officer deals with the corporation in a matter in which his interest is opposed to that of the corporation, he does not, in such a transaction, represent the corporation so as to impute his knowledge to his principal. *De Kay v. Hackensack Co.*, 38 N. J. Eq., 158; *Camden Safe Deposit Co. v. Lord*, 67 N. J. Eq., 489.

Election of officers.

A court of equity has no power to determine the validity of an election of officers of a private corporation, but when this question must be determined in a suit in which equity has jurisdiction, it will be determined as any other question of law or fact. *Mechanics' National Bank v. Burnet Mfg. Co.*, 32 N. J. Eq., 236.

De facto officers.

Lord Ellenborough's definition (*King v. Bedford Level*, 6 East, 356, 368) of a de facto officer as "one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law," is followed in *Mechanics' National Bank v. Burnet Mfg. Co.*, 32 N. J. Eq., 236.

The acts of a de facto officer of a corporation are valid—so far, at least, as they create rights in favor of third persons. *Doremus v. Dutch Reformed Church*, 3 N. J. Eq., 332; *Hackensack Water Co. v. De Kay*, 36 Id., 548; *Brahn v. Jersey City Forge Co.*, 38 N. J. Law, 74. See *Kuser v. Wright*, 52 N. J. Eq., 825; *Collier v. Consol. Ry. Lighting & Refrigerating Co.*, 70 N. J. Law, 313.

In the State of New York, held that the court may not enjoin a de facto director, holding under color of election, from exercising the duties of his office. *Moir v. Provident Savings Life Ass'n*, 127 App. Div. (N. Y.), 591.

Ratification of acts of officers.

Individual directors cannot, by words or by silence, ratify a bargain made by the president, nominally in behalf of the corporation, but actually without authority and in a matter with which the corporation has no concern. *Demarest v. Spiral Riveted Tube Co.*, 71 N. J. Law, 14.

The president may employ a manager at a salary and for a percentage of net profits, and if the corporation acquiesces therein it is bound. *Bennett v. Millville Imp. Co.*, 67 N. J. Law, 320.

When directors authorize the issue of a bond and the bond as issued does not comply with the agreement, the officers may issue a new bond expressive of the agreement. *Bergen v. Rogers*, 67 Atl. Rep., 290; *aff'd* 70 Id., 1100.

The action of the president in taking the necessary preliminary steps to exercise the right of eminent domain may be ratified by the directors. *Kountze v. Morris Aqueduct*, 58 N. J. Law, 303, 695.

The adoption of a resolution ratifying the act of an officer is equivalent to an original authorization. *In re West Jersey Traction Co.*, 59 N. J. Eq., 63.

A board of directors cannot ratify its own illegal act, and if silence of stockholders is relied upon as ratification, it must be of sufficient duration to be evidence of acquiescence. *Oliver v. Rahway Ice Co.*, 64 N. J. Eq., 596.

A contract executed by the president, although unauthorized, will be presumed to have been ratified by the corporation, unless it dissents within a reasonable time, provided the contract is within the corporate powers. *Indianapolis R. M. Co. v. St. Louis, &c., R. R. Co.*, 120 U. S., 56; *Pittsburg R. R. Co. v. Keokuk Bridge Co.*, 131 U. S., 371.

Ratification by a majority of the stockholders is equivalent to an original authorization. *McAlpin v. Universal Tobacco Co.*, 57 Atl. Rep., 802; *First Nat. Bk. v. Com'l Travelers' Home Ass'n*, 108 App. Div. (N. Y.), 78; *aff'd* 185 N. Y., 575.

Where stockholders at a legally called meeting ratify the acts of officers in executing a mortgage to secure bonds, the ratification is equivalent to an original act and a minority stockholder is bound thereby. *McAlpin v. Universal Tobacco Co.*, 57 Atl. Rep., 802.

Acquiescence in the acts of an agent ratifies the act even if he had not authority at the time of the transaction. *Durar v. Insurance Co.*, 24 N. J. Law, 171.

If a corporate officer makes a contract in excess of his authority, and the corporation accepts the avails, it is estopped from repudiating the transaction. *White v. Sheppard*, 41 App. Div. (N. Y.), 113.

In the absence of statutory limitation or prohibition, authority to act may be conferred upon an agent by parol and may be inferred from circumstances or may be implied from the acquiescence of the corporation in a general course of business. *Crossley v. St. Philip Neri*, 74 N. J. Law, 653.

The principal will not ordinarily be deemed to have ratified a contract of an agent, or estopped from repudiating it, unless

he appears to have had actual or constructive notice of its terms. *Clement v. Young-McShea Amusement Co.*, 70 N. J. Eq., 677.

Ratification, which is a method of estoppel in pais, may be evidenced from the facts and circumstances and from the acts of the parties. *Parsons Mfg. Co. v. Hamilton Ice Mfg. Co.*, 78 N. J. Law, 309.

Contracts.

Contracts of a corporation stand on the same footing as contracts of natural persons as to their validity and effect. *Mayor v. Harrison*, 71 N. J. Law, 69; *Illinois Trust & Savings Bank v. Arkansas*, 76 Fed. Rep., 271.

Before a corporation can be bound by the acts of one as its agent on the ground of implied authority or estoppel, it must appear that the corporation is chargeable with notice of the acts relied on to establish such implied authority. *Schlessinger v. Forest Products Co.*, 76 Atl. Rep., 1024.

Notice to an agent who is alleged to have acted for a corporation is not notice to the corporation. *Id.*

When an agent, not duly authorized, enters into a contract in behalf of the corporation, the company must elect either to repudiate the entire contract and place the parties in statu quo, or to carry out the entire contract. *Canadian Imp. Co. v. Lea*, 69 Atl. Rep., 455.

The principal stockholder of a corporation has no authority, by reason of that fact, to bind the corporation by contract. *Collins v. Leary*, 74 Atl. Rep., 42.

Where a corporation repudiates an unauthorized contract made by one of its officers it must put the other party in statu quo. *Wilson v. Trenton Passenger Ry. Co.*, 56 N. J. Eq., 783.

The general rule is that an agreement made by an officer or agent of a corporation who assumes to act in its behalf can be enforced where it has received the benefit of the agreement. *Davies v. Harvey Steel Co.*, 6 App. Div. (N. Y.), 166; *Patterson v. Robinson*, 116 N. Y., 193.

Contracts signed by officers.

The proper way to sign corporate contracts is: The
Company, by

President (or other officer, as the case may be), and not merely the name of the officer followed by his official title. Such titles are sometimes held to be mere words of description. In New York where a bank discounted for a third party a negotiable promissory note reading, "We promise to pay," etc., and signed by the individual names of the parties, with the addition of the words "President"

and "Secretary," it was held to be the note of the individuals signing.

The court held that nothing short of notice, express or implied, brought home to the bank at the time of discounting it that the note was issued as the note of the corporation of which the signers were officers, and was not intended to bind the signers personally, could defeat, on the ground that it was a corporate obligation, the remedy of the bank against the individuals signing. Not only was the note in that case signed by the defendants with the addition of the words "President" and "Secretary," but the name of the company was printed across the end of the note. *First Nat'l Bank v. Wallis*, 150 N. Y., 455.

In New Jersey, however, the Court of Errors and Appeals held the rule to be that such a note is *prima facie* the note of the individual and not of the corporation, but that parol evidence may be introduced to show whether it really was the personal note of the officer or was the note of the corporation. *Kean v. Davis*, 21 N. J. Law, 683; *Reeve v. 1st Nat'l Bk.*, 54 N. J. Law, 208; see also *Dayton v. Warne*, 43 N. J. Law, 659; *Sheldon v. Dunlap*, 16 N. J. Law, 245; *Den v. Hay*, 21 N. J. Law, 174; *Brown ads. Combs*, 29 N. J. Law, 36; *Simanton v. Vliet*, 61 N. J. Law, 595; *Shotwell v. M'Kown*, 5 N. J. Law, 973.

Where the officers signed an agreement in their individual names, adding thereto the title of the office held by each, and the character in which they assumed to act is known to the person dealing with them, the agreement is that of the corporation and not that of its officers. *Groves v. Acker*, 85 Hun (N. Y.), 492; *Bush v. Gilmore*, 41 App. Div. (N. Y.), 89.

Negotiable instruments.

In New Jersey the courts have held the rule to be that a note signed by the officer's name followed by his official title is *prima facie* the note of the individual and not of the corporation, but that parol evidence may be introduced to show whether it really was the personal note of the officer or the note of the corporation. *Kean v. Davis*, 21 N. J. Law, 683; *Reeve v. First Nat'l Bk.*, 54 N. J. Law, 208; see also *Dayton v. Warne*, 43 N. J. Law, 659; *Sheldon v. Dunlap*, 16 N. J. Law, 245; *Simanton v. Vliet*, 61 N. J. Law, 595; *s. c.* 63 Id., 548; *Shotwell v. M'Kown*, 5 N. J. Law, 973; *De Kay v. Hackensack Water Co.*, 38 N. J. Eq., 158; *Tate v. Security Trust Co.*, 63 N. J. Eq., 559.

Where individuals sign a promissory note, and, after their respective names, write "Prest." and "Treas.," it is their individual obligation and not that of the corporation, if there is nothing in the body of the note to indicate that it is a corporate obligation,

even though the name of the corporation be printed on the margin. *First Nat. Bk. v. Wallis*, 150 N. Y., 455.

One who receives from an officer of a corporation the note of such corporation in payment of or as security for a personal debt of such officer does so at his peril. *Prima facie* the act is unlawful, and, unless actually authorized or ratified by the corporation, the note is void in the hands of the payee. *Louis DeJonge & Co. v. Woodport Hotel & Land Co.*, 77 N. J. Law, 233.

President.

The powers of a president are strictly those of an agent delegated to him by the directors. He may perform any acts incident to his office without special authority from the directors, but any act done outside the scope of his authority will not bind the corporation, unless the act has been expressly authorized or ratified by the directors. He has no authority to alter a lease formally entered into by the corporation. *Mausert v. Feigenspan*, 68 N. J. Eq., 671; *Titus v. Cairo & Fulton Ry. Co.*, 37 N. J. Law, 98; *Stokes v. Pottery Co.*, 46 N. J. Law, 237; *Bennett v. Millville Improvement Co.*, 67 N. J. Law, 320. But it has been held that the president of a company, having general authority to contract for making and delivering its products, has like authority, until it is withdrawn, to terminate and release such contract. *Indianapolis R. M. Co. v. St. L., &c., R. R. Co.*, 120 U. S., 256.

Stokes v. N. J. Pottery Co. (supra), held that the president is the chief executive officer, and by virtue of his office has authority to perform all acts of an ordinary nature which, by usage or necessity, are incident to his office, and may bind the corporation by contracts in the usual course of business. See also *Beebe v. George H. Beebe Co.*, 64 N. J. Law, 497, holding that the president has power by virtue of his office to take all steps necessary for the defence of his company in litigation, including the appointment of an attorney for this purpose. But the president of a corporation has no power *virtute officii* to alter the provisions of a formal agreement under seal entered into by the corporation itself. Nor the provisions of a contract relating to compensation for services. *Minshull v. N. J. Terminal R. Co.*, 76 N. J. Law, 684.

The general authority of the president of a business corporation is sufficient to warrant him in collecting outstanding accounts and in selling accounts for their face value. But there is no authority in the president to assign money not yet earned. *Cogan v. Conover Mfg. Co.*, 69 N. J. Eq., 816.

The president does not have power to bind the corporation to pay a commission for the sale of his own stock, even if he is owner of nearly all the stock and is the general and active manager of the business. *Demarest v. Spiral Riveted Tube Co.*, 71 N. J. Law, 14.

The title to corporate property is in the corporate entity; therefore, a personal bill of sale executed by the president does not transfer title, although he owns substantially all the stock. *Palmer v. Ring*, 113 N. Y. App. Div., 643; *Saranac & L. P. R. R. Co. v. Arnold*, 167 N. Y., 368; *Buffalo L., T. & S. D. Co. v. Medina Gas Co.*, 162 N. Y., 67.

The president *prima facie* has power to do any act which the board of directors could authorize or ratify. *Davies v. Harvey Steel Co.*, 6 App. Div. (N. Y.), 166; *Prindle v. Washington Life Ins. Co.*, 73 Hun (N. Y.), 488.

The company cannot be estopped by the action of the president until it is shown that the president was authorized to bind it as to the matter in question. *Millville Traction Co. v. Goodwin*, 53 N. J. Eq., 448.

But when a contract is made by a manager in pursuance of specific instructions of those who have full power to bind the corporation the contract is valid. *Stuart v. Staten Island Clay Co.*, 65 N. J. Law, 546.

The president of a building company has no implied power to award sub-contracts on construction work for which his company has the main contract. *Murphy v. W. H. & F. W. Cone*, 76 Atl. Rep., 323.

The president and cashier of a bank, as such, have no inherent power to execute, in the name and behalf of the corporation, a mortgage or conveyance of real estate. *Leggett v. N. J. Mfg. & Bkg. Co.*, 1 N. J. Eq., 541; *Bennett v. Keen*, 59 N. J. Eq., 634.

A president and secretary have no power to execute, in the name of the corporation, a declaration against offsets to a mortgage, *Voorhees v. Nixon*, 72 N. J. Eq., 791; *aff'd* 69 Atl. Rep., 643.

As to when the president's agency is a question for the jury, see *Loh v. Broadway Realty Co.*, 77 N. J. Law, 112.

Vice-president.

As to the powers and authority of a vice-president, see *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721; 16 L. R. A. (N. S.), 703, where it was held that the affidavit of consideration required to be affixed to chattel mortgages may be made by the vice-president of the corporation without allegation of specific authority. The fact that the affidavit was made by such officer is *prima facie* evidence of authority.

Secretary.

It is the duty of the secretary to keep the minute book of the company. The minutes of a corporation need not be entered up in the handwriting of the secretary; it is sufficient if they are

entered under his direction and approved by him. *Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402.

The law does not ordinarily imply in the secretary of a business corporation the power *ex officio* to bind the company by his act. He cannot, in the absence of special authorization, accept the surrender of a lease given by a corporation to its tenant and bind the corporation to pay the wages of the employees of the lessee. He may, of course, have larger powers by special appointment from the directors, and evidence of such powers may be found in the circumstances of the particular case. *Harris v. Congress Hall Hotel Co.*, 76 N. J. Law, 367; *Curry v. Id.*, 73 Atl. Rep., 124.

The secretary, by virtue of his office, may not make an affidavit upon which litigation is to be instituted. *North Penn Iron Co. v. Boyce*, 71 N. J. Law, 434.

In so far as this case holds that a corporation cannot act through an officer save as it has contracted with him and given him authority under the law of principal and agent, or that an administrative officer cannot make an affidavit in behalf of the corporation except as the *alius*, the agent of the corporation, and subject to the rules and limitations of an agent, it is criticized in *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721.

The secretary has no authority by virtue of his office to alter the terms of a contract made by the company in retaining attorneys to represent it. *Scott v. N. Y. Filling Co.*, 75 Atl. Rep., 772.

When a secretary purchased a set of books and entered minutes of proceedings therein, the possession of the secretary was the possession of the company, and the secretary had no right to take books with him. Neither did he have a lien on the books for the purchase price or for his services. *State ex rel. Ry. Co. v. Goll*, 32 N. J. Law, 285.

Liability of treasurer for corporate funds.

Where a treasurer, with the company's consent, deposited funds in a bank to his credit, he was held entitled to allowance for deposits lost by failure of the bank. It was also held that he was not liable for interest on funds of the company in his hands, unless he had used them so as to earn interest, or for his own purposes. *Laurel Springs Land Co. v. Fougerey*, 57 N. J. Eq., 318.

Removal of officers.

“If there be a fixed term of office, removal must be for cause; but otherwise, unless limited by statute or by-law, the power to remove ministerial officers is absolute in the body that elects, subject only to a right of action if there be a breach of contract of employment. *Thompson on Corporations*, Sections 804, 805, 820. The president of a corporation has no securer tenure than any other ministerial

officer. Ibid, Section 4611. Our statute (Section 13) simply provides that every corporation organized thereunder shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead. The by-laws of the Griffing Company directed that the directors shall choose these officers, but fixed no term of office, and at the meeting of November 23 were amended so as to give express power of removal. Such an amendment has been judicially upheld in this state. *Weinburgh v. Union, &c., Advertising Co.*, 55 N. J. Eq., 640. The stockholders ratified the removal made under this authority.' In re *A. A. Griffing Iron Co.*, 63 N. J. Law, 168; *aff'd Id.*, 357.

Certiorari is not the proper remedy to review a resolution of a corporation removing its president from office, or proceedings to reinstate or re-elect directors who had resigned, where mandamus or quo warranto are available remedies. *Overman v. Manly Drive Co.*, 71 Atl. Rep., 1125.

When the by-laws provide that two-thirds of the whole board of directors shall vote in favor of the removal of an officer, the required number of affirmative votes must be had. *Stephany v. Liberty Cut Glass Works*, 76 N. J. Law, 449.

Torts committed by agents.

It is now thoroughly settled here as elsewhere that corporations are liable for torts which they may commit by agents, and that the pertinent inquiry when such liability is charged is (1) whether the act in question is one within the scope of the corporate powers, and (2) whether it was done by a person who was the agent of the corporation in doing it. *W. J. & Seashore R. R. Co. v. Welsh*, 62 N. J. Law, 655, 658; *State v. Ry. Co.*, 23 N. J. Law, 360; *Dock v. Elizabethtown Steam Mfg. Co.*, 34 N. J. Law, 312; *Hoboken, &c., Co. v. Kahn*, 59 N. J. Law, 218.

It may be sued for malicious prosecution, libel, and assault and battery. *State v. Passaic, &c., Soc.*, 54 N. J. Law, 260, 265; *Vance v. Ry. Co.*, 32 N. J. Law, 334; *McDermott v. Evening Journal Ass'n*, 43 N. J. Law, 488; *aff'd 44 Id.*, 430; *Brokaw v. Ry. Co.*, 32 N. J. Law, 328; *Empire Cream Co. v. De Laval Dairy Co.*, 75 N. J. Law, 207.

The assent of executive officers to a tortious act renders the corporation liable in tort, and punitive damages may be awarded. *Carey v. Wolff & Co.*, 72 N. J. Law, 510.

On the other hand, a corporation may sue for a libel against it in its business; special damage must be shown except where the imputed language is actionable per se. *Trenton Mut. Life Ins. Co. v. Perrine*, 23 N. J. Law, 402; *Empire Cream Separator Co. v. De Laval Dairy Supply Co.*, 75 N. J. Law, 207.

As to the responsibility of a corporation for the act of an officer in causing an arrest, see *Hartdorn and Radcliff v. The Webb Manufacturing Co.*, 75 Atl. Rep., 893.

Authority to expel trespassers may be inferred from the conduct of an agent in charge of property belonging to a realty corporation. *Dierkes v. Hauxhurst Land Co.*, 79 Atl. Rep., 361.

Compensation of employees.

A corporation may lawfully agree to pay an employee a specified proportion of its net profits as part compensation. *Bennett v. Millville Imp. Co.*, 67 N. J. Law, 320. See further on this point notes to Section 47, respecting dividends, and *Finley Rubber Varnish & Enamel Co. v. Finlay*, 32 Atl. Rep., 740.

Other Officers.

14. The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.

P. L. 1846, p. 66; P. L. 1849, p. 302; Act of 1875, §19.

A statute that authorizes the doing of a certain act by a corporation or by its agent should be given effect by permitting the corporation to act either per se through its officer or per alium through its agent. *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. Law, 721; 16 L. R. A. (N. S.), 703.

To bind the corporation the acts of its agents must be within the implied or apparent authority of that agent or must have been ratified by the corporation. *Phoenix Pottery Co. v. Perkins Co.*, 74 Atl. Rep., 258.

See cases cited under Section 13.

Vacancies Among Directors.

15. Any vacancy occurring among the directors or in the office of president, secretary or treasurer by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors.

P. L. 1846, p. 66; P. L. 1849, p. 302; Act of 1875, §20.

If the number of directors is increased the directorships thus created are not vacancies within the meaning of this section. In re A. A. Griffing Iron Co., 63 N. J. Law, 168; aff'd Id., 357.

As to the power to fill vacancies at common law, see Kearney v. Andrews, 10 N. J. Eq., 70.

First Meeting of Corporation.

16. The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place and purpose of the meeting, which notice shall be published at least two weeks before the meeting in some newspaper of the county where the corporation is established; or said first meeting may be called without publication if two days' notice be personally served on all the incorporators; or if all the incorporators shall, in writing, waive notice and fix a time and place of meeting, no notice or publication shall be required; whenever under any of the provisions of this act, or any amendment thereto, a corporation is authorized to take any action after notice to its members or stockholders, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved and such requirements be waived, in writing, by every member or stockholder of such corporation or by his attorney thereunto authorized.

(As amended by Chap. 58, Laws of 1902; P. L. 1902, p. 217.)

P. L. 1846, p. 66; P. L. 1849, p. 303; Act of 1875, §22; P. L. 1891, p. 113.

Where all the incorporators but one were present at the first meeting, and he afterwards assented to what was done, the incorporation was held to be valid, although no notice was given. Babbitt v. East Jersey Iron Co., 1 Stew. Dig., p. 208, §13, not otherwise officially reported.

The meeting must be held at the place designated in the certificate of incorporation as the principal office. Section 44, post.

This section was amended in 1902 by adding the last clause. The language is not free from ambiguity. The provision is taken without substantial change from the General Corporation Law of New York, Section 42, formerly Section 38, which has been upheld in *Hallett v. Metropolitan Messenger Co.*, 69 A. D., 258. The amendment is apparently intended to authorize expressly the waiving of notice by stockholders, a right which undoubtedly they had prior to this enactment. It might be construed to permit any corporate action to be taken on the assent in writing of all the stockholders at once without intermediary statutory formalities, and without a meeting of the stockholders.

17. Stockholders May Vote by Proxy; Quorum, &c.

Absent stockholders may vote at all meetings by proxy in writing; and every corporation may determine by its certificate of incorporation or by-laws the manner of calling and conducting all meetings, what number of shares shall entitle the stockholders to one or more votes, what number of stockholders shall attend either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum, and may by its original or amended certificate of incorporation provide that any action which now requires the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or requires their consent in writing to be filed, may be taken upon the consent of and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy; provided, in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum; if the quorum shall not be so determined by the corporation, a majority in interest of the stockholders, represented

either in person or by proxy, shall constitute a quorum.

(As amended by Chap. 119, Laws of 1901; P. L. 1901, p. 260.)

P. L. 1846, p. 66; R. S. (Ed. of 1846), p. 139, §3; P. L. 1849, p. 302; Act of 1875, §21; P. L. 1891, p. 113.

The matter in bold face type, inserted by the amendment of 1901, was doubtless intended to enable corporations whose stock is widely scattered to provide against the contingency of the defeat of needed charter amendments through the inaction of stockholders and the failure to procure the attendance in person or by proxy of two-thirds in interest of each class of stockholders.

It is an open question whether this amendment accomplishes all that its framers evidently had in mind. The words, "any action which now requires the consent of the holders of two-thirds of the stock at any meeting after notice to them given," is strictly applicable to only two provisions of the statute:

(1) Dissolution under Section 31, which requires the consent of "two-thirds in interest of all the stockholders."

(2) Merger or consolidation under Section 104, et seq., which requires "the votes of the holders of two-thirds of all the capital stock" (Section 105).

Both are undoubtedly within the meaning of the amendment.

Amendments to the certificate of incorporation, increases and decreases of capital stock and the other matters provided for by Section 27, require the consent of "two-thirds in interest of each class of the stockholders having voting powers." While there might be particular instances where the "consent of the holder of two-thirds of the stock" would be equivalent to the "consent of two-thirds in interest of each class of the stockholders," ordinarily it would be otherwise.

The Legislature has seemingly, perhaps unintentionally, made a distinction between two kinds of proceedings authorized by the Corporation Act.

In one group, measures looking to the termination of the corporate existence (i. e., dissolution) or of its identity (i. e., merger or consolidation), class distinctions are not regarded and each share of stock is deemed to have an equal voice. The amendment permits any corporation, by so providing in its certificate of incorporation, to change this, first, by giving each class an equal voice, and second, by requiring the consent of two-thirds in interest of the stockholders actually present or represented at the meeting, not necessarily two-thirds in interest of each class outstanding or of all the stockholders.

In the other, measures looking to the continued existence of the company, but providing for changes in its constitution, each class

of stock is deemed to have an equal voice, and the consent of the holders of two-thirds of each class of stock outstanding is required. The strict language of the amendment does not permit any change in this respect.

It is open to question whether it is safe to proceed under this provision in any case provided for by Section 27. Courts are not inclined to favor amendments by indirection of important statutory provisions or to construe liberally statutes which may tend to abridge the rights of stockholders.

Sections 31, 104, et seq., 133, and 134, seem to be governed by this amendment.

Sections 27, 28, and 119 do not seem to be affected by it.

See Forms 369, 370.

Proxy.

The power of attorney need not be in any prescribed form, nor be executed with any particular formality. It is sufficient if it appear on its face to confer the requisite authority, and that it be free from all reasonable grounds of suspicion of its genuineness and authenticity. *In re Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529.

Absence of a seal does not invalidate a proxy for the election of officers. *Hankins v. Newell*, 75 N. J. Law, 26.

A proxy executed by a majority of a board of directors becomes invalid when a part of such majority, sufficient to reduce the remainder to a minority, revokes such execution. *In re Delaware River & A. R. Co.*, 76 N. J. Law, 163.

The validity of voting by proxy rests upon the statute; and, as the statute limits the right to absent stockholders, it follows that when a shareholder who has given a proxy attends the election in person, his proxy becomes void, because he is not an absent stockholder. *Chapman v. Bates*, 61 N. J. Eq., 658; *In re Schwartz & Gray, Inc.*, 77 N. J. Law, 415.

According to the terms of Section 36, which reads, "Unless otherwise provided in the charter, certificate or by-laws of the corporation," each stockholder shall be entitled to one vote in person or by proxy for each share of stock, it would seem that the right to vote by proxy may be taken away by a charter provision.

Voting.

In the absence of any provision in the certificate of incorporation to the contrary, this section secures to each shareholder one vote for each share of stock held by him and standing on the books of the company. Section 36. *Camden & Atlantic R. R. Co. v. Elkins*, 37 N. J. Eq., 273.

Provision may, it seems, be made in the certificate of incorpora-

tion or by-laws requiring each shareholder to hold a certain number of shares to entitle him to one or more votes. *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq., 440.

For the statutory provisions regulating elections of directors, see §34, et seq. As to voting pools or trusts, see p. 123.

Annual meeting of stockholders.

It will be noted that the statute makes no provision for an annual meeting of the stockholders, except so far as it contemplates an annual election of directors by the stockholders. It is important, therefore, that the by-laws should be explicit as to the business which may be transacted at the annual meeting.

Notice of meetings.

The general rule is that extraordinary matters and such as cannot be fairly embraced in the transaction of business provided for by the charter itself, cannot be taken at a meeting unless notice is given. *Schwarzwalder v. Tegen*, 58 N. J. Eq., 319, at 326; citing *People's Ins. Co. v. Westcott*, 14 Gray, 440; *Morawetz Corp.*, §483; *Ang. & Ames* (10th Ed.), §489. See also *Dunster v. Bernards Land & Sand Co.*, 74 N. J. Law, 132.

It is the duty of one acquiring stock to have the same transferred on the books of the company, or to notify the company of his address where notices should be sent in order to charge the company with neglect, and his laches in this respect precludes recovery where notices are sent to the address of the previous holder. *Dana v. American Tobacco Co.*, 72 N. J. Eq., 44; *aff'd*, 69 Atl. Rep., 223.

Adjournment of meetings.

Where a quorum assembles at a stockholders' meeting it is competent for them to adjourn the meeting to a later day, and it is not necessary to send notice of the adjournment to the stockholders. *Cook on Corporations*, Sec. 601, and cases cited. It is frequently provided in the by-laws that those who assemble at the time and place fixed for the meeting, although less than a quorum, may adjourn until a later day. But in such cases it is the better practice to provide that notice of such adjournment be sent to the stockholders.

18. Preferred and other special stocks.

Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof

as shall be stated and expressed in the certificate of incorporation or in any certificate of amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding eight per centum per annum, payable quarterly, half yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; provided, the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.

(As amended by Chap. 110, Laws of 1901; P. L. 1901, p. 245.)
P. L. 1860, p. 603; Act of 1875, §25; P. L. 1882, p. 252; P. L. 1889, p. 413; P. L. 1889, p. 415; P. L. 1893, p. 445, §5.

This section was amended in 1901 in the following particulars:

- (1) The power to create preferred stocks under this provision is now limited to corporations organized under the Corporation Act.
- (2) Preferred stock may be made subject to redemption at any time after three years; the limitation that such stock can only be

redeemed at a fixed time and price to be expressed in the certificate of stock is removed. (Mandamus will not lie to compel redemption of unauthorized issue. *State ex rel. Smith v. Ferracute Mach. Co.*, 52 Atl. Rep., 231.)

(3) The rate of dividends and other conditions as to the issue of preferred stock must be set forth in the original or amended certificate of incorporation.

(4) If the original or amended certificate of incorporation so provides, dividends on common stock may be paid concurrently with dividends on the preferred stock.

Classes of stock.

The present act is broad and authorizes the creation of a number of kinds of stock, the only restriction being that the total amount of preferred stock issued at any time shall not exceed two-thirds of the paid up capital stock.

Stock may be preferred as to dividends, as to capital (either or both) or otherwise, or may have a restriction or qualification of voting powers. The power to vote may be wholly taken from any class of stock. *Miller v. Ratterman*, 24 N. E. Rep., 496 (Ohio, 1890).

Calling stock "preferred stock" does not, per se, define the rights of such stock, but in order to determine in what respect the holder of such stock is to be preferred to the holder of ordinary stock, resort must be had to the statute or contract under which it is issued. *Elkins v. Camden & Atlantic R. R. Co.*, 36 N. J. Eq., 233, 236.

The creation of preferred stock by a corporation not authorized by the special act incorporating it, nor under general laws existing at that time, and against the objection of a shareholder, violates the obligation of the contract between the corporation and the shareholder, and is therefore illegal. *Einstein v. Raritan Woolen Mills*, 70 Atl. Rep., 295.

Stock with preferences may have any name and designation that the stockholders see fit to give it.

The terms of the preferences and qualifications and restrictions must be stated in the certificate of incorporation, original or amended, and it is wise to insert them as well in the certificates of stock in order that there may be no question about the holders having full notice of the terms, conditions and limitations of the stock.

All preferences as to dividends and guarantees of dividends are contingent; they must be made payable only out of the net profits of the company and can be paid in no other way.

Nature of preferred stock.

"There are certain legal principles pertinent to this discussion which I think are so firmly established that they may be taken for

granted, without argument or the citation of authorities. First, stockholders are not creditors, and until the winding up of the corporation are entitled to nothing from it but a distribution of its net earnings; second, dividends can only be paid out of profits; third, calling stock preferred stock does not, per se, define the rights of such stock, but in order to determine in what respect the holder of such stock is to be preferred to the holder of ordinary stock, resort must be had to the statute or contract under which it is issued; and, fourth, where the statute or contract under which preferred stock is issued declares or promises that the holder of such stock shall receive a dividend of a fixed and certain rate per annum without limiting the annual sum to be paid as dividends to profits earned or made within a designated period, as for example, that he shall receive a dividend of seven per cent. per annum before any dividend shall be paid on the ordinary stock, there the preferred stockholder is entitled to seven per cent. per annum from the date of the issuing of the stock held by him, whether profits sufficient to pay him each year are made or not; and if, at the first division of profits, sufficient shall not have been made to pay him the whole sum due, he may carry the arrears due him over to the next dividend, and continue to do so until he has received the whole sum due him, calculated at seven per cent. per annum from the date of issue of the stock held by him." *Elkins v. Camden & Atlantic R. R. Co.*, 36 N. J. Eq., 233, 236.

In drawing the certificates of stock where there are different or special classes great care should be exercised and the rights of the respective classes should be set out in detail.

Where one corporation made an agreement with another, by which the former was to reduce the dividends payable on its preferred stock, and the latter was to pay such reduced dividends direct to the stockholders, the alteration of the certificate of incorporation of the former so as to provide for such reduced dividends was enjoined at the instance of a non-assenting holder of the preferred stock, since his legal remedy would be inadequate. *Pronick v. Spirits Distributing Co.*, 58 N. J. Eq., 97.

Rights of preferred stockholders on winding up.

Section 86, which provides that on dissolution "the surplus funds, if any, after payment of creditors, and the costs, expenses and allowances, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares," does not create a statutory preference. *McGregor v. Home Ins. Co.*, 33 N. J. Eq., 181, 186-7, construing the provisions of the Act of 1875, held that the legislative intent was that where the law or contract under which the stock is issued does not in any way limit or restrict them, the rights of the holders of the

preferred stock are to be first paid the par value of their shares, before anything is paid to the general stockholders. But this case is not applicable to the Revision of 1896 and its amendments. See notes to Section 86, post.

Holders of preferred stock paying cumulative dividends may not enforce their claim under a mortgage in preference to general creditors. *Black v. Hobart Trust Co.*, 64 N. J. Eq., 415; *aff'd* 65 Id., 769.

Preferred stockholders are entitled only to the preferences set forth in the certificate of incorporation, and in the absence of express stipulation in the certificate of incorporation, preferred stock gives the holder a preference only in the division of profits. *Lloyd v. Penn. Electric Vehicle Co.*, 72 Atl. Rep., 16.

Liability of preferred stock for assessments.

The provision that "in no event shall a holder of preferred stock be personally liable for the debts of the corporation" does not affect the liability of preferred stockholders to calls or assessments for unpaid instalments up to the par value of the stock, to which such stockholders are subject under sections 21 and 22 equally with holders of common stock. *Kirkpatrick v. American Alkali Co.*, 140 Fed. Rep., 186, 190. See also *Campbell v. American Alkali Co.*, 125 Id., 207.

Founders' shares.

Founders' shares, as they are called in England, may now be created. They are in common use in England.

18a.* Conversion of Preferred Stock into Bonds; Issue of Bonds Convertible into Common Stock.

With the consent of two-thirds in interest of each class of the stockholders present in person or by proxy at a meeting called in the manner provided in section twenty-seven, every corporation organized under this act that shall have issued preferred stock, entitling the holders thereof to receive dividends at a rate exceeding five per centum per annum, and that shall have continuously declared and paid dividends at such rate, on such preferred stock for the period of at least one

*Arbitrary number; section inserted here merely for convenience of reference.

year next preceding the meeting, and whose floating or unfunded debt at the time of the stockholders' meeting shall, in the certificate thereof filed with the secretary of state, be certified not to exceed ten per centum of the par amount of the preferred stock then outstanding, and whose assets at such time, after deducting the amount of its indebtedness, shall be certified in the judgment of the officers making such certificate to be at least equal to the amount of preferred stock issued and outstanding, may, with the consent of the holder of any such preferred stock, redeem and retire the preferred stock of such holder, out of bonds or out of the proceeds of bonds of the corporation, bearing interest at a rate not exceeding five per centum per annum, the principal of such bonds being made payable at a date not less than ten years from the date thereof; every corporation organized under this act may, from time to time, in the manner above provided, issue bonds, which, if therein so declared, shall be convertible at par at the option of the holder, into fully-paid common stock of the corporation at par, within any period therein prescribed not less than two years from the issue thereof; and in such case the board of directors may authorize the issue of the common stock into which such bonds, by their terms, shall be convertible.

(Supplement of March 28, 1902; P. L. 1902, p. 217.)

For the statute allowing the sale of bonds under par, see Section 49a and notes.

The written consent of the stockholders is not required to be filed with the Secretary of State as in Sec. 27.

Conversion of preferred stock into bonds.

The constitutionality of this act was sustained by the Court of Errors and Appeals in *Berger v. United States Steel Corporation* (63 N. J. Eq., 809).

Venner v. United States Steel Corporation, 116 Fed. Rep., 1012,

held that this act did not effect such an alteration in the status of a stockholder of the defendant as to impair the obligation of his contract with the corporation within the meaning of the Federal Constitution.

A holder of common stock cannot question the plan of the company for the conversion of its preferred stock into bonds. *Raymond v. United States Steel Corporation*, 63 N. J. Eq., 830.

Mandamus will not lie to compel redemption of preferred stock issued in disregard of the provisions of the organic law of the company, even although all persons interested acquiesce in the unauthorized issue. *State ex rel. Smith v. Ferracute Machine Co.*, 68 N. J. Law, 237.

A copy of the certificate filed by the Steel Corporation in the office of the Secretary of State will be found among the precedents (Form 13, post).

This act authorizes corporations having preferred stock to retire, with the consent of the holders, all or any of the preferred shares. Its primary purpose is to enable corporations to refund their preferred stock in whole or in part and thereby to cut down the fixed charges, with a consequent increase of funds available for the declaration of dividends on the common stock, or on any of the preferred stock not retired.

The practical effect of the act is that such corporations may change their stockholders into bondholders, giving them the advantage a bond has as an investment security over preferred stock, in return for which the stockholder accepts a smaller rate of interest than the return as dividends on the preferred stock.

The act places certain restrictions on the exercise of this important power with the view to prevent an improper use of it:

(1) The retirement must be authorized by the affirmative vote of two-thirds in interest of each class of the stockholders present in person or by proxy at a meeting specially called for the purpose.

(2) No share can be retired without the consent of its holder.

(3) No corporation can avail itself of this act unless it has declared and paid dividends on its preferred stock at a rate exceeding five per cent. per annum for the period of at least one year before the meeting. As it is unlawful to pay dividends unless earned, this requirement would tend to deter a corporation insolvent, or contemplating insolvency, from attempting to defeat or impair the claims of its creditors by changing its stockholders into creditors.

(4) As a further safeguard, the president and secretary must make a certificate that the floating or unfunded debt does not exceed ten per cent. of the par value of the preferred stock outstanding, and that the assets, after deducting all indebtedness, are at least equal to the par amount of the preferred stock issued and outstanding.

It is, therefore, a prerequisite that a company shall be solvent, in the business sense of the term, and that its preferred stock is unimpaired.

Issue of bonds with privilege of conversion into common stock.

The act also provides that bonds may be issued with the privilege of the holder to convert them into common stock. The right of conversion does not appear, by express language, to be restricted to bonds issued for the purpose of retiring preferred stock, but would seem to include any series of bonds as to which the privilege of conversion is given, and whose issue has been authorized in the manner provided by Section 27.

Issue of bonds convertible into stock.

The issuance of bonds by a corporation with an option to convert them into new stock is illegal and will be enjoined as a deprivation of the right of stockholders to participate in the issue of new stock on the same terms as other parties. *Wall v. Utah Copper Co.*, 70 N. J. Eq., 17.

19. Stock certificates.

Every stockholder shall have a certificate, signed by the president or a vice-president, and either the treasurer or an assistant treasurer, or the secretary or an assistant secretary, certifying the number of shares owned by him in such corporation. All certificates heretofore issued which are signed as aforesaid, shall be as valid and effectual for all purposes as if signed by the president and treasurer of the corporation.

P. L. 1846, p. 67; P. L. 1849, p. 303; Act of 1875, §23; P. L. 1911, Ch. 53.

A share of the stock of a corporation is simply the title of the shareholder to his proportion of the corporate property, and the certificate of stock is nothing else than evidence of the shareholder's right to a share of the net produce of all the property of the company. *Graydon's Ex'rs v. Graydon*, 23 N. J. Eq., 229; *Donnell v. Wyckoff*, 49 N. J. Law, 48; *Jellenik v. Huron Copper Mining Co.*, 177 U. S., 1.

Where all of the capital stock of a corporation was issued and outstanding, one purchasing from a stockholder an old certificate in lieu of which new certificates had been issued, did not become

a stockholder. But a bona fide purchaser without notice is unaffected by equities which might have affected the stock in the hands of an intermediate holder. *New York & Eastern Tel. & Tel. Co. v. Great Eastern Tel. Co.*, 74 N. J. Eq., 221; aff'd 75 Id., 297.

While a corporation which has issued two certificates for the same stock may not assert the validity of one and the invalidity of the other, so that the rights of the holders cannot be settled in an action by the corporation, there is no objection to defending the relation of the holders in an action by one of the holders to which the corporation and all claimants of the stock are made parties. *Id.*

A subscriber for stock who has complied with the terms of his subscription and has paid the assessments becomes a stockholder and is entitled as of right to a certificate in the form prescribed by the statute. If the corporation refuses he may compel it to give him a certificate. *Am. Pig Iron Storage Co. v. Assessors*, 56 N. J. Law, 389, 393.

The holding of certificates of stock creates a legal presumption of rightful ownership which can only be overcome by proof that it was illegally issued or legally forfeited, and the burden of proof is upon the party who alleges that the stock is illegally or fraudulently issued. *Downing v. Potts*, 23 N. J. Law, 66, 79. *In re Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 539.

The certificate is evidence of the stockholder's personal and property rights as a member of the corporation, and when the company is dissolved and a decree of a court of equity is entered distributing its assets, the certificates cannot be said to be outstanding. The certificate exists thereafter only as evidence of the right to receive a distributive share from the proceeds held by the trustees. Dissolution of the corporation terminates a stockholder's personal rights, namely, to vote, to attend meetings, etc., but his property rights remain. *Bijur v. Standard Distilling & Distributing Co.*, 70 Atl. Rep., 934.

A statement on a stock certificate that the shareholder is entitled to so many shares, transferable on the corporate books, in person or by attorney, when the certificates are surrendered, but not otherwise, is a notification that whoever in good faith buys the stock and produces the certificates, regularly assigned, with power to transfer, is entitled to have the stock transferred to him, and such notification also assures the holder that no transfer will be made to any one not in possession of the certificates. *Bank v. Lanier*, 11 Wallace (U. S.), 369.

On the theory that the buyer of stock is the equitable owner and seeks to consummate a legal title thereto, equity will compel the transfer of stock on the books of the corporation. *Reilly v. Absecon Land Co.*, 71 Atl. Rep., 248, citing *Archer v. American Waterworks Co.*, 50 N. J. Eq., 33.

As to the right of a corporation to refuse to issue an unreasonable number of certificates to a stockholder, see *Schell v. Alston Mfg. Co.*, 149 Fed. Rep., 439.

Duties of president and treasurer as to issue of stock certificate.

“Their duties, as president and treasurer, respectively, with reference to the execution and delivery of stock certificates, were purely clerical or ministerial. * * * The certificate in this case, as in all cases, is a mere voucher, a mere receipt establishing, when regularly issued, a prima facie title in the holder to the shares of stock named therein.” *Lakewood Gas Co. v. Smith*, 62 N. J. Eq., 677.

20. Transfer of shares.

The shares of stock in every corporation shall be personal property, and shall be transferable on the books of the corporation in such manner and under such regulations as the by-laws provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

P. L. 1846, p. 67; P. L. 1849, p. 303; Act of 1875, §26.

Stock standing in the name of a decedent, or in the joint names of such a decedent and another person or persons, is not assignable, or transferable upon the books of a corporation of this state by a foreign executor, administrator or trustee until the tax provided for by the collateral inheritance tax act has been paid to the State Treasurer. And no corporation of this state shall transfer any such stock without first notifying the State Comptroller and obtaining his consent. P. L. 1909, c. 228, p. 331, §12.

Situs of stock.

The courts have recognized that the property right of a stockholder is an intangible thing, a kind of chose in action, and that stock has no actual situs anywhere. But the general rule appears to be that it is situate at the place where the rights in its ownership can be most effectively administered. It follows that the situs of stock is the state where the corporation is created. Consequently, a court has jurisdiction to determine the question of title to stock of a corporation which is domiciled within the district even if the owner resides outside of the state. The same rule applies when a trustee resides outside of the state. *Amparo Mining Co. v. Fidelity*

Trust Co., 73 Atl. Rep., 249; *Jellenik v. Huron Copper Mining Co.*, 177 U. S., 1.

To the same effect is *Andrews v. Guayaquil & Quito Ry. Co.*, 69 N. J. Eq., 211; aff'd 71 Id., 768, where it was held that when the proceeding as to stock is in rem or quasi in rem, service may be made upon the holder by publication. The rule was likewise clearly stated by Vice-Chancellor Howell in *Sohege v. Singer Mfg. Co.*, 68 Atl. Rep., 64, where it was held that shares of stock in a New Jersey corporation have a situs here for purposes of attachment or other seizure by the courts. An earlier case in support of the same rule is *Voorhis v. Terhune*, 50 N. J. Law, 147.

The Court of Errors and Appeals in *Neilson v. Russell*, 71 Atl. Rep., 286, construed the act for the taxation of collateral inheritances (P. L. 1894, p. 318) as not applicable, where shares of stock of a New Jersey corporation represented by certificates held by a non-resident at his domicile outside the state at the time of his death pass by will to persons not exempt by law from taxation. In this case the testator died before the amendment of the inheritance tax act in 1906. Later, Justice Minturn, sitting in the Supreme Court, in the case of *Dixon v. Russell*, 73 Atl. Rep., 51, decided that under the amendment of 1906 (P. L. 1906, p. 432) such certificates are taxable. The provision of the act of 1906 upon which this decision was based is still retained in a revision of the collateral inheritance tax act. P. L. 1909, p. 325.

But on appeal, 76 Atl. Rep., 982, the Court of Errors and Appeals reversed this decision and held that the Act of 1906, being defective in title, did not operate to impose taxes on the transfer of property generally, and that the law as stated in *Neilson v. Russell*, supra, remained unchanged. In accordance with the law of this case it was held, in *Astor v. State*, 72 Atl. Rep., 78, that stock in a New Jersey corporation belonging to a testator domiciled in a foreign state was not subject to the tax.

Apparently the Legislature anticipated these decisions and accordingly amended the title to the Act (P. L. 1909, Chap. 209), thus making the shares of a non-resident decedent taxable. The act was further amended (P. L. 1909, Chapters 159 and 228), making corporations liable in transferring such stock.

Transfer.

The provisions of charters and by-laws under the statute that stock of the corporation shall be transferable only on the books of the company, are intended for the protection of the company. *Matthews v. Hoagland*, 48 N. J. Eq., 455, 486.

“A certificate of stock accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of a third party, presumptive evidence of ownership in the holder. And where

the party in whose hands the certificate is found is a holder for value, without notice of any intervening equity, his title cannot be impeached. The holder of the certificate may fill up the letter of attorney, execute the power, and thus obtain the legal title to the stock, and such a power is not limited to the person to whom it was first delivered, but enures to each bona fide holder into whose hands the certificate and power may pass." *Prall v. Tilt*, 28 N. J. Eq., 479, 483; *Rogers v. N. J. Ins. Co.*, 8 N. J. Eq., 167; *Bush v. Warren Foundry Co.*, 32 N. J. Law, 439; *Gibbs v. Craig*, 58 N. J. Law, 661, 664.

And such a transfer, if bona fide, is effectual against an attaching creditor of the transferrer. *Broadway Bank v. McElrath*, 13 N. J. Eq., 24.

This case was approved by the Court of Errors and Appeals in *Hunterdon County Bank v. Nassau Bank*, 17 N. J. Eq., 496.

The title of the holder is not affected by a provision in the corporate charter or by-laws, that the stock is transferable only on the books of the company. Such a provision is merely a protection for the corporation. *Mt. Holly Turnpike Co. v. Ferree*, 17 N. J. Eq., 117; *Chemical Nat. Bk. v. Colwell*, 132 N. Y., 250.

But mere physical delivery of stock certificates indorsed by blank power of attorney to transfer them will not pass title if the purchaser knew that the shares were in pledge, although he paid value for them. *N. J. Trust & Safe Deposit Co. v. Bodine*, 60 Atl. Rep., 387.

The reason of the rule is stated in *Matthews v. Hoagland*, supra, to be "that the record owner has done everything in his power to effect the transfer, and by such act has assigned all interest he may have had and surrendered all indicia of ownership. As to third parties, holders for value, he is estopped from asserting ownership—as to volunteers, the gift is complete and irrevocable, if inter vivos." *Id.*, p. 486; see *Walker v. Dixon Crucible Co.*, 47 N. J. Eq., 342.

Where the charter provides that stock shall be transferable on the books of the company as the by-laws shall ordain, no legal transfer can be made until books are provided and by-laws adopted for the transfer. *McCourry v. Doremus*, 10 N. J. Law, 245.

In the absence of provision in the charter creating a lien for indebtedness of stockholders, a by-law, of which a transferee of a certificate of stock had no notice, is insufficient to create such a lien. A provision in the charter that the stock should be transferable in accordance with the by-laws relates only to the formality of transfer. *Drexel v. Long Branch Gas Co.*, 3 N. J. L. J., 250.

It is not necessary to endorse certificates of stock in order to pass the title where a deed has been executed authorizing the transfer on the books of the company. *Curtis v. Crossley*, 59 N. J. Eq., 358; see also *Tarbox v. Grant*, 56 N. J. Eq., 199, 204. Nor is a transfer

on the books of the company necessary to make the legal title complete where delivery of a certificate of stock is accompanied by an assignment. *O'Connor v. International Silver Co.*, 68 N. J. Eq., 67; *aff'd Id.*, 680.

A sale of stock accompanied by the delivery of the certificate and a power of attorney authorizing its transfer on the books of the company, is valid against creditors of the seller, and gives the buyer precedence over subsequent judgments, executions, and attachments procured against the seller. But failure to demand a transfer on the books of the company will make it necessary for the buyer to indemnify the company against loss before a decree will be granted requiring the corporation to transfer the stock to him on the books where in the meantime the stock has been levied on and sold in attachment proceedings against the seller. *Reilly v. Absecon Land Co.*, 71 Atl. Rep., 248.

The liability of a transferee of stock for unpaid calls due and to become due upon stock standing in his name on the books of the company is considered at length by the Court of Appeals of New York in *Sigua Iron Co. v. Brown*, 171 N. Y., 488, at p. 496. See cases cited.

Specific performance of sales of stock.

Where the corporate stock to which a contract of sale relates is not procurable in the market, and its pecuniary value is not readily ascertainable, specific performance will, as a rule, be decreed. *Safford v. Barber*, 70 Atl. Rep., 371.

Fraudulent issue by directors.

Where directors, to secure themselves in office and in control of a corporation, issue stock to their friends for a small proportion of its par value, it is a fraud, and the company will be restrained from receiving votes on such stock. *Way v. Am. Grease Co.*, 60 N. J. Eq., 263.

Fraud in sales of stock.

Defendant (an officer of a corporation) knew that the corporation had made a favorable sale of property which enhanced the value of the stock, which fact was known only to the directors and officers. Plaintiff had no knowledge of it, and no knowledge of facts to put him on inquiry as to it. Defendant bought the plaintiff's stock at much less than its real value, at a price for which the plaintiff, in his ignorance, was willing to sell it. Held, that there was no fraud and that there was no duty from the officers to the stockholders to make any disclosure. *Crowell v. Jackson*, 53 N. J. Law, 656.

A person making false representations in the sale of stock is liable for the loss which the purchaser suffers by retaining the stock

under the belief that the representations are true. In such cases the market value of the stock while the fraud is operative on the conduct of the purchaser is unimportant; the measure of damages is the difference between the amount paid for the stock and the value of the stock after the fraud ceased to be operative. *Duffy v. Smith*, 18 N. J. L. J., 217; *aff'd Smith v. Duffy*, 57 N. J. Law, 679. See also *Crater v. Binninger*, 33 N. J. Law, 513; *Hubbard v. International Mercantile Agency*, 68 N. J. Eq., 434; *Phillips v. Crosby*, 70 N. J. Law, 785.

Diligence in the discovery of the fraud and promptness in repudiation of the purchase or subscription are necessary conditions for the rescission of the contract for the subscription of stock on the ground of false representations by the president of the company as to its financial condition and the issue of its stock. Three years' delay held to be fatal to recovery. *Tierney v. Parker*, 58 N. J. Eq., 117.

Equity will not entertain a suit for the repayment of money paid for stock on the ground of fraudulent representations. *Krueger v. Armitage*, 58 N. J. Eq., 357; *Polhemus v. Holland Trust Co.*, 59 N. J. Eq., 93. See *contra*, *Manning v. Berdan*, 135 Fed. Rep., 159.

As to the prosecution of a corporation for false statements with intent to mislead investors, see P. L. 1898, p. 842. *State v. Ware*, 71 N. J. Law, 53.

Proceedings to compel company to issue stock.

The subscribers to the capital stock of a telegraph company upon payment of one-third of the par value caused to be issued to themselves certain shares of full-paid capital stock. At the same meeting of stockholders it was resolved that certain shares of stock be issued to said subscribers for services alleged to have been rendered by them to the company, without any account or statement of the amount due them. In such a case the presumption is that full-paid stock was issued upon payment of only a third of its par value. To the enforcement of a contract thus tainted with illegality the court will not lend its sanction. The court said that the relators had an adequate remedy by suit for damages, and were not entitled to mandamus; that mandamus will not issue where the contract is unexceptional in its character. *Morton v. Timken*, 48 N. J. Law, 87.

Refusal to transfer stock.

Ordinarily mandamus will not lie to compel the transfer of shares of a corporation to a purchaser, or to compel the company to issue certificates of stock. *Bush v. Warren Foundry Co.*, 32 N. J. Law, 439; *Curtis v. Steever*, 36 N. J. Law, 304; *Galbraith v. Building Ass'n*, 43 N. J. Law, 389; *Morton v. Timken*, *supra*. The owner has an adequate remedy in an action for damages. A court of equity will compel the transfer of stock to the equitable owner thereof,

upon the books of a corporation, when such transfer is fraudulently withheld by the agents of the corporation. *Archer v. American Water Works Co.*, 50 N. J. Eq., 33.

A new company was formed to take over the assets of an old company under an agreement that stockholders of the old company were to receive share for share of stock in the new company. Held, suit for specific performance would lie at instance of an individual stockholder of the old company for himself alone. *Fletcher v. Newark Telephone Co.*, 55 N. J. Eq., 471.

Where the certificates of stock are transferable without restriction, the corporation cannot discriminate and refuse to transfer certificates to a person who is hostile to it. *Rice v. Rockefeller*, 134 N. Y., 174.

Where the corporation cancelled an entry of stock standing on its books and issued a new certificate without a surrender of the outstanding certificate, a bona fide holder of the latter may maintain an action for damages upon the company's refusal to transfer it. *Holbrook v. N. J. Zinc Co.*, 57 N. Y., 616.

The improper refusal of an officer to transfer stock does not render him personally liable for damages to the stockholder. The cause of action is against the corporation. *Dunham v. City Trust Co.*, 115 App. Div. (N. Y.), 584; *aff'd* 193 N. Y., 642; *Cooley v. Curran*, 54 Misc. (N. Y.), 221.

Attachment of shares of stock.

Shares of stock of a corporation may be attached by virtue of the Attachment Act (P. L. 1901, p. 158). *Castle v. Carr*, 16 N. J. Law, 394; *Curtis v. Steever*, 36 N. J. Law, 304, 307; *Cord v. Newlin*, 71 N. J. Law, 438.

Shares cannot be attached if the certificate has been delivered or transfer has been made on the books of the company, before the issue of the attachment. *Bush v. Warren Foundry Co.*, *supra*. See also *Broadway Bank v. McElrath*, 13 N. J. Eq., 24; *Matthews v. Hoagland*, 48 N. J. Eq., 455, 486, and cases cited.

A transfer or pledge of stock as collateral security, without a transfer on the books of the company, but accompanied by a blank power of attorney, will protect the holder against the claims of an attaching creditor. *Broadway Bank v. McElrath*, *supra*. See also *Hood v. McNaughton*, 54 N. J. Law, 425.

Capital stock of a domestic corporation is subject to attachment under the statute, although the certificate of stock be in possession of the debtor outside of the state. *Cord v. Newlin*, 71 N. J. Law, 438.

Ownership of stock.

The Court of Chancery has jurisdiction of a suit to establish a trust in shares of stock in a New Jersey corporation, although the

trustee resides out of the state, and cannot be served with process, but can only be brought in by the statutory proceedings against absent defendants. *Amparo Mining Co. v. Fidelity Trust Co.*, 73 Atl. Rep., 249.

21. Stockholders liable until subscriptions are fully paid.

Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

P. L. 1846, p. 16; P. L. 1846, p. 68; Act of 1875, §5.

Stock issued at an admitted overvaluation but without fraud is not subject to a further call, either directly or indirectly, by the suppression of dividends declared from net profits where the assets are not impaired, and such a dividend is not a dividing of the capital of the corporation. *Goodnow v. American Writing Paper Co.*, 72 N. J. Eq., 645; *aff'd* 69 Atl. Rep., 1014.

General creditors' bill.

Where the capital, i. e., the property of a corporation has proved insufficient to satisfy its debts and obligations, each stockholder is liable for the amount of his unpaid subscriptions, or such proportion thereof as shall be necessary to satisfy the debts of the company and meet the expenses of winding up its affairs, but no more. *Wetherbee v. Baker*, 35 N. J. Eq., 501; *Hood v. McNaughton*, 54 N. J. Law, 425, 427; *Cumberland Lumber Co. v. Clinton Hill Co.*, 57 N. J. Eq., 627. The unpaid subscriptions constitute a trust fund for the payment of the debts of the corporation. A creditor may file a bill to enforce this liability only after he has exhausted his remedies at law by judgment, issue of execution and its return unsatisfied. He must sue in behalf of all the creditors of the corporation and not for himself alone; the corporation must be made a party; and all the property and assets of the corporation must be brought into the suit and put in course of administration. The proceedings are in the nature of an equitable accounting. *Bickley v. Schlag*, 46 N. J. Eq., 533.

The ultimate liability of a stockholder of a foreign corporation

for payment of corporate debts depends on the law of the state of incorporation, not on the law of the forum, the control of which goes no further than the remedies for enforcing the liability. This liability is to be enforced according to the statutes of the foreign state adopting the construction of its courts and the decisions of the courts of such states so far as they have declared the principles controlling the same. *Johnson v. Tennessee Oil, &c., Co.*, 74 N. J. Eq., 32.

Where statutory provisions exempting stockholders from personal liability except for unpaid subscriptions are used to issue stock fraudulently at an overvaluation the holders of such stock remain subject to liability to creditors, under the principles of the "trust-fund" doctrine. *Ibid.*

The Attorney-General is not a necessary party to proceedings to enforce liability of stockholders under the statute. See *v. Heppenheim*, 55 N. J. Eq., 240; *aff'd* 56 *Id.*, 453.

The "trust-fund" rule does not apply to creditors who had knowledge of a fraudulent issue of stock for overvalued property. *Johnson v. Tenn. Oil Co.*, *supra*.

Mere creditors have no interest in a proceeding charging directors with wasting assets until their claims are established at law or in equity and other assets of the company have been exhausted. *Edwards v. National Window Glass Jobbers' Ass'n*, 58 Atl. Rep., 527; 68 *Id.*, 800.

Action at law by receiver.

When a corporation is insolvent and its business is ended, the subscribers for or holders of its unpaid stock are assessable for only so much of what is unpaid on the stock as will satisfy the claims of corporate creditors and meet the expenses of winding up its affairs. An order for such an assessment may be made by the Court of Chancery in the suit wherein the corporation was adjudged to be insolvent and when so made its propriety cannot be questioned in suits brought against the stockholders for its enforcement. Such an order is the result of an exercise of judicial power and therefore should be made only after a reasonable opportunity has been afforded to the stockholders to be heard in the matter. The petition of the receiver should set forth all the facts showing the necessity for an assessment. *Cumberland Lumber Co. v. Clinton Hill Co.*, 57 N. J. Eq., 627. See also *Barkalow v. Totten*, 53 N. J. Eq., 573; *Hood v. McNaughton*, 54 N. J. Law, 425; *Kirkpatrick v. Am. Alkali Co.*, 135 Fed. Rep., 230; *s. c.* 140 *Id.*, 186.

Liability of original subscriber to stock.

An original subscriber to stock becomes liable for his subscription upon the execution of the certificate of incorporation,

though he does not participate in the organization, and though the corporation becomes merely a de facto corporation. *McCarter v. Ketcham*, 74 N. J. Law, 825. The subscription and the acceptance of a certificate for shares constitute a contract by which the subscriber agrees to pay the remaining instalments on demand by the corporation. *Hood v. McNaughton*, 54 N. J. Law, 425.

From this agreement the subscriber cannot recede without the assent of the company, evidenced by the consummation, in the form required by the statute, of the transfer by the entry of the name of the transferee on the registry of stockholders in the place of the subscriber, and the delivery of a new certificate to and in the name of the transferee. *Id.*

A stockholder is liable for assessments lawfully made while he is registered on the books of a corporation as such, and he is not released from such liability by a transfer of the stock after the call has been made, but before it becomes payable. *Campbell v. American Alkali Co.*, 125 Fed. Rep., 207.

As to the liability of stockholders who assent to a special assessment on fully paid stock; where a judgment against the corporation has been regularly obtained; or, in the case of a de facto director, see *Johnson v. Tennessee Oil Co.*, 74 N. J. Eq., 32.

In an action at law for contribution, recovery against a director or stockholder is limited to the proportionate share of each, independent of the question whether any of the contributors were insolvent or without the state. In equity the contributor or co-surety is liable to contribute to the payment of his proportionate share of any co-surety insolvent or beyond the reach of process. *Johnson v. Tenn. Oil Co.*, 75 N. J. Eq., 314.

A subscriber, relying on false and fraudulent representations in a prospectus respecting the value of the property to be transferred to the company, has ground for relief against the corporation. *Manning v. Berdan*, 135 Fed. Rep., 159.

A provision in the certificate of incorporation that stockholders of record shall be liable for assessments on unpaid stock, is not inconsistent with the provisions of Sections 8 and 21. Such a provision is binding upon a stockholder who became such after the organization of the company, and, in case of a transfer, protects the company until it is informed of the name of the vendee or until the surrender of the stock certificate. *Brown v. Morton*, 71 N. J. Law, 26.

Assessments may be made on full paid stock by agreement of the stockholders and there is no reason why a consenting stockholder should not be bound by such agreement, and the company may enforce such agreement. *Johnson v. Tenn. Oil Co.*, 74 N. J. Eq., 32.

Liability of stockholders of foreign corporation depends on the laws of the state of incorporation. *Id.*

A court of equity is the proper tribunal to order an assessment on unpaid stock; but when the assessment has been ordered an action at law may be brought. *Clevenger v. Moore*, 71 N. J. Law, 148.

Actions upon stockholders' liability must be brought where the defendant resides or can be served with process. *Bigelow v. Old Dominion Copper Co.*, 71 Atl. Rep., 153.

As to the right to enforce stockholders' liability outside of the state of incorporation, see *Middletown National Bank v. Railway Company*, 197 U. S., 394; *Leyner Engineering Works v. Kempner*, 163 Fed. Rep., 605.

The elements which constitute a contract of subscription to stock are stated in *Woods Motor Vehicle Co. v. Brady*, 181 N. Y., 145, and in *Ecuadorian Association v. Ecuador Co.*, 70 N. J. Eq., 277; aff'd 71 Id., 757. This case, along with *Honeyman v. Houghey*, 66 Atl. Rep., 582, and *In re Remington Automobile & Motor Co.*, 139 Fed. Rep., 766; s. c. 153 Id., 345, discusses the liability of a stockholder for corporate debts, especially where property has been exchanged for fully paid stock.

One may become liable as a stockholder without formal subscription. *Clevenger v. Moore*, 71 N. J. Law, 148.

In *American Alkali Co. v. Kurtz*, 134 Fed. Rep., 663; aff'd 138 Id., 392, it was held that the real owner of corporate stock standing in the name of a "dummy" was liable as a shareholder for unpaid assessments and for statutory liability for debts. The court cited *Pauley v. State Loan & Trust Co.*, 165 U. S., 606.

On the question of the payment of subscriptions in stock of another company, see *Southern Trust & Deposit Co. v. Yeatman*, 134 Fed. Rep., 810.

Advances made by a promoter for the purpose of furthering a scheme to give stock the status of "full paid" stock were held, in *Hollins v. American Union Electric Co.*, 66 N. J. Eq., 457, to be payments for stock and not loans.

Liability of transferee of stock.

A distinction is drawn between one who holds the stock by transfer and an original subscriber. The former may, it seems, in the absence of a fraudulent purpose, discharge himself of liability for unpaid instalments by due transfer of his shares, although the transfer may not be recorded on the books of the company. The latter cannot obtain immunity in that way. *Hood v. McNaughton*, 54 N. J. Law, 425, 428.

A bona fide transferee of stock, the certificate for which recites that it is full paid, is not liable on the contract of the original subscriber, provided he has no knowledge that the stock has not been fully paid and no notice from which knowledge may be inferred, or which requires him to make inquiry. The trust fund theory does

not go so far as to warrant the ruling that a creditor should be allowed to shift the right which he holds against the original subscriber to a bona fide transferee who receives the stock without knowledge of any infirmity. *Easton Nat'l Bank v. Am. Brick & Tile Co.*, 69 N. J. Eq., 326; *aff'd* 70 Id., 722.

The registered holder of stock at the time of the call is liable. *Campbell v. American Alkali Co.*, 125 Fed. Rep., 207.

The liability of stockholders for unpaid stock is analogous to that of joint guarantors and solvent stockholders within the jurisdiction are liable for the entire burden. See *v. Heppenheimer*, 69 N. J. Eq., 36.

For a discussion of the question of the implied liability of a transferee of stock for unpaid instalments, see *Sigua Iron Co. v. Brown*, 171 N. Y., 488, 496.

Remedy for collecting assessments.

The validity of an order of directors levying an assessment on a stockholder cannot be collaterally attacked in an action against him to recover the assessment. *Campbell v. American Alkali Co.*, 125 Fed. Rep., 207.

Bonus stock.

Holders of stock given as bonus are liable on it to creditors, but not to the company. *Hebberd v. Southwestern Cattle Co.*, 55 N. J. Eq., 18.

As to the legality of bonus stock issued under resolutions of a board of directors of a foreign corporation, see *Central Consumers' Wine & Liquor Co. v. Madden*, 68 Atl. Rep., 777.

Unless rights of creditors intervene or unless positive fraud has been clearly established, stock issued as a bonus with the sale of bonds, or stock issued as a result of overvaluation of property, cannot necessarily be regarded as issued fraudulently. *Arnold v. Searing*, 73 N. J. Eq., 262.

Statute of limitations.

The statute of limitations commences to run, as to unpaid subscriptions to the stock of a corporation which has become insolvent, after a call and assessment has been made by the receiver upon an order of the court that a call is required to pay creditors. *McCarter v. Ketcham*, 72 N. J. Law, 247; see s. c., 74 Id., 825.

Stockholders' action.

There is no express liability of one stockholder to another for the payment to the company of unpaid stock. The court will not interfere to compel stockholders of a solvent company to make their

stock fully paid where the complaining stockholder is likewise in default. *Sivin v. Mutual Match Co.*, 72 N. J. Eq., 577.

See also cases cited under Section 49.

22. Assessments on Unpaid Shares.

The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof; and the sums so assessed shall be paid to the treasurer at such times and by such instalments as the directors shall direct, said directors having given thirty days' notice of the assessment and of the time and place of payment either personally or by mail or by publication in a newspaper published in the county where the corporation is established.

P. L. 1846, p. 67; P. L. 1849, p. 303; Act of 1875, §27; P. L. 1882, p. 252.

The general rule seems to be that a corporation must comply with all the conditions precedent to payment on the part of the subscribers before a suit can be maintained upon the subscription. Where a subscriber agreed to pay in certain instalments, after certain calls, the court held that there could be no recovery against him without proof that the calls had been duly made.

The rule in New Jersey may be stated as follows: A subscriber is not bound to pay for his stock except in the manner prescribed by statute or defined in the charter or by-laws, unless he waives these requirements. *Grosse Isle Hotel Co. v. l'Anson's Exrs.*, 42 N. J. Law, 10; *aff'd* 43 Id., 442; *Watjen v. Green*, 48 N. J. Eq., 322; *aff'd* 49 N. J. Eq., 576.

In construing a similar section in the Railroad Act, the court held that a suit by the company will not lie on a subscription until a call has been duly made. *Braddock v. P. R. R. Co.*, 45 N. J. Law, 363, 364; see *N. J. Midland Ry. Co. v. Strait*, 35 N. J. Law, 322.

Where the company has become insolvent and a receiver has been appointed, the Court of Chancery may direct the receiver to make calls. *Hood v. McNaughton*, 54 N. J. Law, 425; *Barkalow v. Totten*, 53 N. J. Eq., 573; *Hebberd v. Southwestern Cattle Co.*, 55 N. J. Eq., 18; *Cumberland Lumber Co. v. Clinton Hill Co.*, 57 N. J. Eq., 627; *sustained*, 72 N. J. Law, 247.

“A call is nothing more than an official declaration that the

sums subscribed are required to be paid." *Braddock v. P. R. R. Co.*, *supra*.

The unpaid and uncalled subscriptions for stock cannot be mortgaged or sold by the corporation. Where the call has been duly made, but not collected, an assignment of the amount already called is valid. *Cook on Corporations*, Section 111; see *N. J. Midland Ry. v. Strait*, *supra*.

Preference stockholders are liable for calls and assessments made by directors. *Kirkpatrick v. American Alkali Co.*, 140 Fed. Rep., 186.

23. Neglect to Pay Assessments.

If the owner of any shares shall neglect to pay any sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such number of the shares of the delinquent owner as will pay all assessments then due from him, with interest, and all necessary incidental charges, and shall transfer the shares sold to the purchaser, who shall be entitled to a certificate therefor.

P. L. 1846, p. 67; P. L. 1849, p. 304; Act of 1875, §28.

As to the liability of stockholders to contribute a proportionate share of an assessment due and unpaid by one who is insolvent or beyond the reach of process, see *Johnson v. Tennessee Oil Co.*, 75 N. J. Eq., 314.

24. Sale of Shares.

The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same three weeks successively, once in each week, before the sale, in some newspaper published in the county where the corporation is established, and by mailing a notice thereof to the delinquent stockholder, if he knows his post-office address.

P. L. 1846, p. 67; P. L. 1849, p. 304; Act of 1875, §29.

Where stock has once been rightfully issued, even though nothing has been paid on it by the stockholder, it can only be forfeited

in the mode prescribed by the statute, and the procedure prescribed by the statute must be strictly followed. *Downing v. Potts*, 23 N. J. Law, 66.

An attempted forfeiture of the stock of a dormant corporation for non-payment of assessments and the issue of new certificates does not affect the rights of the original holder where the legal steps to forfeit are not taken. See also as to the rights of purchasers of the old and new certificates, *New York & Eastern Tel. & Tel. Co. v. Great Eastern Tel. Co.*, 74 N. J. Eq., 221; *aff'd* 75 Id., 297.

25. Certificate upon Payment of Capital.

The president and secretary, or treasurer, upon payment of each installment of capital stock, and of every increase thereof, shall make a certificate, stating the amount of the capital so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any, previously paid and reported; which certificate shall be signed and sworn to by the president and secretary or treasurer, and they shall, within ten days after such payment, cause the certificate to be filed in the office of the secretary of state.

P. L. 1846, p. 68; P. L. 1849, p. 304; Act of 1875, §§30, 31; P. L. 1893, p. 447.

No certificate of payment of capital stock is apparently required to be filed until the full amount of capital stock authorized by the certificate of incorporation has been paid in, and the words "every increase thereof" seem to contemplate an increase beyond that amount made by amendment in pursuance of Sections 27 and 28, *post*. The question has not been adjudicated, probably because the penalty attaches only after the officers have refused for thirty days to file the certificate after written request so to do. The common practice is to file a certificate upon payment of the amount with which the company commences business, as stated in the certificate of incorporation, and a further certificate upon payment in full of the total capital stock authorized.

In New York it has been held, where a statute requires verification by the oath of the president or vice-president and the treasurer or secretary, and such verification is made by one person who is both vice-president and treasurer, it is a literal compliance. *Manhattan*

Co. v. Kaldenberg, 165 N. Y., 1, rev's'g 27 App. Div., 31; Novelty Mfg. Co. v. Connell, 88 Hun, 254, 257.

26. Penalty for failure to file.

If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.

P. L. 1846, p. 68; P. L. 1849, p. 304; Act of 1875, §32.

No action can be maintained until thirty days after a written request has been made by a creditor or stockholder of the officers to make a certificate and their neglect or refusal to do so within that time. *Nassau Bank v. Brown*, 30 N. J. Eq., 478.

The liability created by this section is considered at length in *Waters v. Quimby*, 27 N. J. Law, 296; *aff'd* 28 Id., 533.

26a.* Incorporators may amend certificate of incorporation before payment of capital.

It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original certificate of incorporation was recorded and file with the secretary of state, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under the act to which this is a supplement, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been

*Arbitrary number; section inserted here merely for convenience of reference.

filed and recorded on the date of the filing and recording of the original certificate; provided, however, that nothing herein shall permit the insertion of any matter not in conformity with the act to which this is a supplement; and provided, however, that this act shall not in any manner affect any proceedings pending in any court; for filing said amended certificate of incorporation, the secretary of state shall charge a fee of twenty dollars; provided, that where the total authorized capital stock of the corporation is increased by said amended certificate the secretary of state shall charge an additional fee of twenty cents for each one thousand dollars of said increase.

(Supplement of April 19, 1898, §1; P. L. 1898, p. 407.)

There was in the Revision of 1896 no provision for the amendment of a certificate of incorporation before the payment of the capital. A mistake or omission could only be cured after full organization. See Section 27. This is a substantial re-enactment of Sections 183, 238, 250 and 251, Title "Corporation," General Statutes, all of which were repealed by the Revision of 1896.

27. Amendments and Changes after Organization.

Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its principal office in this State, extend its corporate existence, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and

in the absence of such provision upon ten days' notice given personally or by mail. If two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and upon the filing of the same, the certificate of incorporation shall be deemed to be amended accordingly; provided, that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of state that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places.

Nothing in this act contained shall be construed in any way to amend, alter or modify the provisions of section eighteen of the act to which this act is a supplement.

(As amended by Chap. 84, Laws of 1908; P. L. 1908, p. 127.)

P. L. 1846, p. 67; P. L. 1846, p. 68; P. L. 1849, p. 303; P. L. 1849, p. 304; Act of 1875, §33; P. L. 1876, p. 74; P. L. 1876, p. 235; P. L. 1877, p. 22; P. L. 1877, p. 179; P. L. 1878, p. 157; P. L. 1879, p. 88; P. L. 1880, p. 49; P. L. 1883, p. 240; P. L. 1886, p. 226; P. L. 1887, p. 137; P. L. 1887, p. 156; P. L. 1888, p. 224; P. L. 1889, p. 367; P. L. 1891, p. 87; P. L. 1891, p. 332; P. L. 1892, p. 287; P. L. 1892, p. 362; P. L. 1892, pp. 11, 12; P. L. 1893, p. 444; P. L. 1895, p. 607.

This section, so far as it relates to changing the location of the principal office of the company, has been practically amended by Chapter 85 of the Laws of 1897 (see Section 28a), so that the change

may now be made by resolution of the board of directors alone, upon filing a certificate in the office of the Secretary of State.

An amendment of the certificate of incorporation before the payment of any part of the capital stock is authorized by Chapter 172 of the Laws of 1898 (see Section 26a).

By an amendment of Section 17, passed in 1901, it was attempted to change the effect of this section by providing that any corporation might provide in its certificate of incorporation that the assent of two-thirds of each class of the stockholders present or represented at the meeting shall be sufficient. It is questionable, however, whether the amendment of Section 17 affects the matters covered by Section 27. See notes to Section 17.

"The law administered in this state with regard to the inviolability of contracts was well settled many years before the passage of the Act of 1875. The leading case of *Kean v. Johnson* was decided in 1853. That was followed by *Zabriskie v. Railroad Company* in 1867; and again by *Black v. Canal Company* in 1873. And it is fairly inferable that the thirty-third section (Section 27 of the Act of 1896) was intended to prevent a few dissentient stockholders, as here, from setting up their wills against the will of a large majority, and the statute should be so construed as to further that object." *Meredith v. N. J. Zinc & Iron Co.*, 59 N. J. Eq., 259, 276; 60 N. J. Eq., 445; see also *Pronick v. Spirits Distributing Co.*, 58 N. J. Eq., 97.

This act authorizing the creation of new stock merely gives the consent of the state to the issue if all the stockholders agree, but if all do not agree, the act cannot be held to be a portion of the charter of a corporation organized under a special act or as an amendment thereto. *Einstein v. Raritan Woolen Mills*, 74 N. J. Eq., 624.

The certificate of incorporation is a contract between the shareholders which cannot be affected by any change made in it by virtue of a subsequent act of the Legislature, and it can only be effectually changed by virtue of some act of the Legislature in force at the time the certificate is filed, which should be read into the contract. *Meredith v. N. J. Zinc & Iron Co.*, 55 N. J. Eq., 211; *aff'd* 56 Id., 454; *s. c.* 59 Id., 257.

Action to change the nature of the business must be by direct proceedings in accordance with the statute, and not by merger or consolidation agreement. In the absence of express legislation unanimous consent of the stockholders is necessary. *Colgate v. U. S. Leather Co.*, 72 Atl. Rep., 126.

As to defects in the acknowledgment of an amended certificate of incorporation, see *Philadelphia & C. Ferry Co. v. Intercity Link R. Co.*, 73 N. J. Law, 86; *aff'd* 74 Id., 594.

This provision does not touch the power of directors to make call

for payment of debts or in cases of insolvency. *Cumberland Lumber Co. v. Clinton Hill Lumber Co.*, 64 N. J. Eq., 517.

Increase of stock.

Where the charter specifies a limit to the issue of stock the corporation may not exceed that limit without the consent of the stockholders. Likewise the right to change the kind of stock must be found in the charter or the laws in force at the time of the issue of the charter. *Einstein v. Raritan Woolen Mills*, 74 N. J. Eq., 624.

A corporation is not justified in increasing the capital stock for an illegitimate purpose. It must keep within the legislative bounds of authority. Therefore, where stock is increased in order to issue such stock for property with less than the face value of the stock, a dissenting stockholder may invoke the aid of a court of equity to determine the legality of the issue. *Donald v. American Smelting Co.*, 62 N. J. Eq., 729.

Rights of stockholders on increase of stock.

It has been held that where the capital stock is increased, the original holders are first entitled to subscribe for the increased stock in proportion to their holdings. *Way v. Am. Grease Co.*, 60 N. J. Eq., 263. Where the new stock is issued for property purchased, from which all stockholders will receive the same benefit, original holders cannot insist that new stock shall be issued to them in proportion to their holdings, it being held that Section 55 of the Act of 1875 (Section 48, post), became a part of the contract between the stockholders. In case the corporation deprives the stockholder of his rights in this behalf, the proper remedy is by an action at law for damages. *Meredith v. N. J. Zinc & Iron Co.*, supra.

A stockholder has an inherent right to a proportionate amount of new stock, provided it is issued for money only and not for the acquisition of property for corporate purposes or to effect a consolidation. He can waive this right, but he cannot be deprived of it without his consent. *Stokes v. Continental Trust Co.*, 186 N. Y., 285.

The issuance of bonds convertible into new stock is illegal and will be enjoined as a deprivation of the right of stockholders to participate in such new issue of stock on equal terms with other parties. *Wall v. Utah Copper Co.*, 70 N. J. Eq., 17.

For a discussion of stockholders' rights on the issue of stock, see *Yale Law Journal*, Vol. XVIII, p. 101, December, 1908.

Extension of corporate existence.

Quaere: Does a proceeding under this section to extend the corporate existence of a quasi-public corporation, having and exercising a franchise, extend the term of the franchise? *Jersey City v. North Jersey Street Ry. Co.*, 74 N. J. Law, 774.

A corporation which files a certificate extending its corporate existence must pay the same fees as in the case of filing an original certificate. *National Lead Co. v. Dickinson*, 70 N. J. Law, 596; *aff'd* 72 Id., 313.

As to the constitutionality of the provision for extending corporate existence, see *Jersey City v. North Jersey St. Ry. Co.*, 73 N. J. Law, 175; *aff'd* 74 Id., 774.

When a bank had taken steps to extend its corporate existence and had been treated thereafter by the public and the state as a banking corporation, a borrower was estopped to deny that the bank had no power to make loans. *Campbell v. Perth Amboy Shipbuilding, etc., Co.*, 70 N. J. Eq., 40.

The written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the Secretary of State.¹

Does this section make necessary the public filing of the names and amount of holdings of each of the stockholders assenting to a change or amendment under this section?

Decisions.—The answer to this precise question does not seem to be found in the decisions of New Jersey.

Precedents.—The ruling of the Secretary of State's Office, as shown by the precedents, is that, while the Department prefers to have the names of the stockholders signed to the assent, whether the certificate is signed in person or by proxy, it will receive certificates which are otherwise signed.

Attorney-General.—In an opinion to the Secretary of State, November 25, 1902, the Attorney-General held that the assent should be expressed by the signature of such stockholders or vote in person, with the number of shares owned by them, respectively, placed opposite their names, and by the names of such stockholders as vote by proxy, accompanied by the signature of the proxy and the number of shares owned by such stockholders, respectively.

Practice.—It has been the general practice to file the names of the assenting stockholders, whether the assent be signed in person or by proxy, and as well, the number of shares held by each stockholder.

Suggestions.—1st. It probably is not essential to the validity of the certificate that the respective holdings of the several stockholders be set forth in the assent if the total amount of stock held by the assenting stockholders collectively is properly proved by affidavit or otherwise.

The question as to whether the assent of the stockholders is that of "two-thirds in interest of each class" is a matter of computation and proof.

The statute does not require it to be computed and proved in any

¹Precedents, pp. 623-626.

particular manner as a condition precedent to the filing in the office of the Secretary of State. Proof that the total holdings are of the requisite amount would seem to be legal, even though the computation and actual addition of the respective holdings is not made in detail and worked out upon the certificate.

Thus, if A, B and C each holds ten shares of stock, it would seem to be legally sufficient, if the fact were stated that A, B and C owned thirty shares of stock together without stating the respective amounts owned by each.

2d. Wherever the stockholders sign in person, then their respective names must appear upon the assent.

3d. The main question arises where the written assent is "by proxy," and is as to whether a disclosure of the names of the respective stockholders can be avoided by the use of proxies, by signing the written assent with the name of the proxy only, stating the total number of shares the proxy represents.

In other words, is it legal for John Doe, holding proxies for the certificates of A, B and C, representing the requisite amount of stock, to sign the certificate of amendment simply: "John Doe, proxy for shares of stock," or is it necessary that the assent should be signed: "A, B and C, by their proxy, John Doe?"

The latter is preferable and is the safer course.

On the other hand, it is to be said that the general policy of the corporation statutes of New Jersey is to require publicity as to the names of the stockholders and the number of shares held by each only to the extent that the stock and transfer books must be kept at the principal office, open to the inspection not of the public, but of the stockholders.

It is also true that the policy of the State of New Jersey is to enforce "private publicity"—that is, publicity between the stockholders inter se, as to their identity and respective holdings—rather than publicity to the world.

Does this section present the exception to the rule?

The answer is, that in its present form it probably does.

It is true that certificates of amendment and change in important companies have been drawn and filed by eminent counsel and based upon the opposite view, the certificate of amendment being signed by proxy, without the names of the stockholders and without their respective holdings, simply stating the number of shares the proxy represented.

The certificate of amendment of the Chicago Junction Railways & Union Stock Yards Co., prepared by eminent counsel, was signed by Chauncey M. Depew as proxy for 40,517 shares of preferred stock and 46,520 shares of common stock, and thus executed, was accepted by and filed in the office of the Secretary of State.

There are other precedents of the same kind on file in the office of the Secretary of State.

The conclusion of the matter seems to be that counsel desiring to avoid the possibility of question as to the legality of a certificate of amendment will probably advise the filing of a written assent containing (1st) the names of all the stockholders signing in person; (2d) the individual names of those signed by proxy, giving the name of the stockholder and the name of the proxy; and (3d) the total amount of stock represented by the stockholders thus signing, and proving this fact by affidavit or otherwise attached to the certificate.

If, on the other hand, the legality of the amendment is not of vital importance, and if the desire to avoid the possibility of litigation is less weighty than the desire to avoid undue publicity as to the stockholders and their holdings, possibly exposing individual stockholders to taxation in other states—then, in such case, counsel will probably advise the following of the precedent in the case of the Chicago Junction Railways and Stock Yards Co.

28. Amendments by Corporations Formed Under Other Acts.

Any corporation of this state whether organized under a special act of incorporation or under general laws, excepting railroad and canal corporations, and other corporations possessing the right of taking and condemning lands, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this state, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and fix any method of altering its by-laws permitted by the act to which this is a supplement, in the manner prescribed in the foregoing section, and any corporation may, in the same manner, relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation.

Nothing in this act contained shall be construed in any way to amend, alter or modify the provisions of

section eighteen of the act to which this act is a supplement.

(As amended by Chap. 84, par. 2, Laws of 1908; P. L. 1908, p. 127.)

The amendment created by Chapter 84, Paragraph 2, of the Laws of 1908 (P. L. 1908, p. 127), providing that any corporation may "change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock," has been construed by the Court of Chancery, in the case of a corporation with a special charter granted by the Legislature, to mean that the consent of the state to such change is given by this amendment, provided all the stockholders agree, and therefore as affecting only the contract between the state and the stockholders; but, on the other hand, if they do not all agree, the provision does not affect the fundamental contract between the stockholders and the corporation. *Einstein v. Raritan Woolen Mills*, 74 N. J. Eq., 624.

As has been stated elsewhere, the certificate of incorporation, often called the charter of the company, has a two-fold aspect: first, as a contract between the state and the incorporators and resulting stockholders; second, as a basic contract between the stockholders.

The conclusion is that this or any other amendment permitted by statute affecting the basic rights of stockholders inter se would seem to be ineffective against the will of an objecting stockholder unless the power has been conferred by legislation in such manner that it may be read into the contract of incorporation. See *Colgate v. United States Leather Co.*, 75 N. J. Eq., 229.

This section, as amended, is intended clearly to cover corporations organized under other acts than the Act of 1875, or the Revision of 1896.

See notes to §17.

28a.* Change of Location of Office.

The board of directors of any corporation, organized under the laws of this state, may change the location of the principal office of such corporation within this state to any other place within this state by resolution adopted at a regular or special meeting of such board, by the votes of at least two-thirds of the members of such board; provided, that no certificate shall

* Arbitrary number; section inserted here merely for convenience of reference.

be required to be filed of the removal of any office from one point to another in the same town, township or city in this state.

Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of state, signed by the president and secretary of such corporation, and sealed with its corporate seal; for filing the said certificate, the secretary of state shall charge a fee of five dollars.

Supplement of April 8, 1897; P. L. 1897, p. 175.

See *Stinson v. Cedar Grove Cemetery Co.*, 40 Atl. Rep., 116.

29. Decrease of Capital Stock.

The decrease of capital stock may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; provided, no such decrease of capital

stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted, nor effect any reduction of the taxes that may be required to be paid by the charters of corporations incorporated by special acts.

P. L. 1846, p. 68; P. L. 1849, p. 305; P. L. 1882, p. 139; P. L. 1885, p. 140.

A liberal construction must be given to sections 27 and 29 in order to give effect to the comprehensive grant of the Legislature. A corporation has implied power to purchase its own shares when necessary to forward the legitimate business of the company, but if the purpose is to retire the stock the statutory provisions must be strictly followed. *Berger v. U. S. Steel Corporation*, 63 N. J. Eq., 809.

The fact that retirement of certain shares of stock and issuance of bonds to pay for the shares so retired renders the stock of the dissentient stockholders subject to the prior lien of those who take the bonds, does not affect the power to retire the stock. Even if the purchase were for cash, the shares of dissentients would still be subject to greater burdens. *Id.*

When the surplus, created by a reduction of capital stock, is invested in the stock of other companies, the stock itself may be distributed. *The Continental Securities Co. v. The Northern Securities Co.*, 66 N. J. Eq., 274.

30. Unlawful Reductions of Capital and Unlawful Dividends.

The directors of a corporation shall not make dividends except from its surplus, or from the net profits arising from the business of such corporation, nor shall it divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law; in case of any wilful or negligent violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or who not

then being present, shall have caused their dissent therefrom to be so entered upon learning of such action, shall jointly and severally be liable at any time within six years after paying such dividend, to the stockholders of such corporation, severally and respectively, to the full amount of any loss sustained by such stockholders, or in case of insolvency to the corporation or its receiver to the full amount of any loss sustained by the corporation, by reason of such withdrawal, division or reduction.

2. This act shall take effect immediately, but shall not affect any action or proceeding pending in any court at the time it takes effect, or any right of any corporation, or of any creditor or stockholder of any corporation, against any director under existing law.

(As amended by Chap. 143, Laws of 1904; P. L. 1904, p. 275.)

P. L. 1846, p. 17; P. L. 1846, p. 68; P. L. 1846, p. 69; P. L. 1849, p. 305; Act of 1875, §7.

This section should be read in connection with sections 27 and 29. Neither the directors nor a majority of the stockholders can waive the right of the company to recover the amount of the dividends wrongfully declared under this section. The directors cannot, by an erroneous determination of whether or not net earnings or surplus exist for the payment of dividends, confer either upon themselves or upon the corporation powers which are prohibited by statute. A declaration of dividends, the effect of which is to reduce the capital stock, is ultra vires the corporation because prohibited by law. *Siegman v. Electric Vehicle Co.*, 72 N. J. Eq., 403; *aff'd Id.*, 435. *Affirming Siegman v. Kissell*, 71 N. J. Eq., 123. See also 140 Fed. Rep., 117.

The term "capital stock" seems to be used in two senses in this section. When the Legislature forbids the dividing, withdrawing, or paying to the stockholders any part of the capital stock, it means the capital actually invested; when it forbids the reduction of capital stock, it means the share capital subscribed, or the authorized capital. *Goodnow v. American Writing Paper Co.*, 73 N. J. Eq., 692; *Audenried v. East Coast Milling Co.*, 68 N. J. Eq., 450, 470.

Consequently a dividend may be declared where the company has profits over and above the actual assets with which it began business, although the total assets may not exceed the debts and the nominal share capital. *Goodnow v. American Writing Paper Co.*, *supra*.

This section imposes a liability because of the misfeasance of a director. Where a judgment is recovered against a corporation by default, in an action where the director was not a party, an attempt to hold the director on the ground that the corporation ought not to have the power to suffer a recovery is too severe a construction of the Act. *Audenried v. East Coast Milling Co.*, 68 N. J. Eq., 450.

In the case of *Williams v. Bolce*, 38 N. J. Eq., 364, Chancellor Runyon, relying on the theory that stock is regarded as a trust fund for all the debts of the corporation and that no stockholder can entitle himself to any dividend or share of it until the debts are paid, held, that this statute did not exonerate the stockholders from liability to repay dividends paid out of the capital.

In an exhaustive opinion by Vice-Chancellor Pitney, in the case of *Siegman v. Maloney*, 63 N. J. Eq., 422, affirmed, 65 N. J. Eq., 372, the same general rule was followed and after a careful review of authorities the Vice-Chancellor concluded that the true construction of this section limits its operation to cases where the assets of the corporation are insufficient to pay its creditors. He further held that if the action provided for by this section could be maintained by the corporation without regard to its financial condition, the statute would be highly penal and the court would not entertain a suit for its enforcement, although by reason of peculiar circumstances of the case the stockholders might have no remedy in another court. In such cases the stockholders may not recover from the directors the very money which they have received.

But in *Appleton v. American Malting Co.*, 65 N. J. Eq., 375, the opinion of Vice-Chancellor Pitney in *Siegman v. Maloney* seems to have been modified. The Court of Errors and Appeals held that the statute was not solely for the benefit of creditors after the insolvency of a corporation, but that stockholders may maintain an action on behalf of the corporation after the refusal of the directors to sue, and while retaining the illegal dividends distributed to them, compel the repayment by the directors of the amounts thus illegally distributed.

“The words of the statute give this full measure of protection. For disobedience of its mandate ‘the directors shall be jointly and severally liable to the corporation and to its creditors in the event of its dissolution or insolvency,’ to the corporation in any event, to the creditors in the event expressed in the statute.”

The court aptly remarks that if the statute applies only in cases of dissolution or insolvency the remedies cannot be applied until the corporation is forced into liquidation as a condition of enabling it to recover from its directors the money necessary to make good the impairment of its capital by them.

A stockholder may sue in behalf of the corporation provided he shows a refusal either actual or presumptive by the directors to do so.

In case there has been no actual refusal by the board, the burden is upon the stockholder to show such facts as would warrant the conclusion that a request to the board to prosecute would be useless. *Siegman v. Maloney*, 65 N. J. Eq., 372.

The same rule was stated in *Appleton v. American Malting Co.*, 65 N. J. Eq., 375, and followed in *Herrick v. Dempster*, 75 Atl. Rep., 810. In the latter case the question of practice in making the corporation a party defendant arises, and the inconsistencies of such a position are shown.

The creation by the Legislature of the precise method by which, under certain conditions, stock may be retired and cancelled, is a clear expression of an intention that such corporation shall accomplish the same result in no other way. *Knickerbocker Imp. Co. v. Assessors*, 74 N. J. Law, 583.

In *Siegman v. Electric Vehicle Co.*, 140 Fed. Rep., 117, it is held that this section imposes an absolute duty on a succeeding board of directors to enforce the liability of the prior directors for their violations impairing the capital of the corporation; and that the question of enforcing the liability is not one of internal management, as to which the discretion of the directors is controlling, even though exercised in good faith.

A stockholder receiving dividends out of the capital of a corporation without knowledge of that fact is not liable to the receiver after six years. Directors and officers declaring such dividends are not only liable for the return of the assets wrongfully used, but also for the dividends unlawfully received by them as stockholders and the statute of limitations will not be interposed against this latter liability. *Mills v. Hendershot*, 70 N. J. Eq., 258.

Persons purchasing the capital stock of a corporation have no power to mortgage the assets of the company to pay their individual debt for the stock, thereby depleting its capital and impairing the rights of creditors, and a mortgage so given is void, and there remains an implied promise of the purchaser to pay the agreed price for the stock. *Hess v. Reick*, 69 Atl. Rep., 1090. Reversed on particular facts of case, 78 N. J. Law, 645.

Since this section provides an adequate remedy at law for declaration of dividends out of capital stock, a preliminary injunction against a proposed declaration of dividends will not issue unless it is shown that the directors are insolvent or that the circumstances are such as to warrant an injunction. *Schoenfeld v. American Can Co.*, 55 Atl. Rep., 1044.

The remedies provided for in this section may be enforced against a director in a foreign jurisdiction where a similar statute exists. *Hutchinson v. Stadler*, 85 App. Div., N. Y., 424; *Hutchinson v. Curtiss Amer. Malting Co.*, 45 Misc. N. Y., 484.

As to the payment of dividends from a fund set aside by the directors as an additional working capital, see *Bassett v. U. S. Cast Iron Pipe & Foundry Co.*, 70 Atl. Rep., 929; *aff'd* 73 Id., 514.

New York decisions.

Under the provisions of a New York statute, similar to the foregoing, cases have been decided as follows:

A stockholder of a New Jersey corporation, transacting business in New York by virtue of a certificate of authority so to do, may maintain an action on behalf of himself and others similarly situated, to compel a director who participated in declaring dividends, in violation of section 30 of the New Jersey General Corporation Law, to restore to the treasury of the corporation the amount of dividends unlawfully declared and paid, if the corporation refuses to bring the action. *Hutchinson v. Stadler*, 85 App. Div., 424.

A director who is absent from the meeting when an unlawful dividend is declared, is not liable, although he is present at a meeting subsequently held at which the minutes of the former meeting were ratified. *Hutchinson v. Curtiss*, 45 Misc., 484.

The liability imposed upon directors who declare a dividend except from surplus profits, is to be treated as a provision for indemnity against any loss which the corporation or its creditors may sustain by reason of the payment of an unlawful dividend. *Dykman v. Keeney*, 16 App. Div., 131; *aff'd* 160 N. Y., 677. See also *Dykman v. Keeney*, 34 App. Div., 45.

Directors have no right to pay any dividend, either in stock or money, unless the capital of the corporation is left unimpaired. *Berwind-White Coal Mining Co. v. Ewart*, 11 Misc., 490, *aff'd* 90 Hun., 60.

31. Voluntary Dissolution.

Whenever, in the judgment of the board of directors, it shall be deemed advisable and most for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and also beginning within said ten days cause a like notice to be pub-

lished in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolutions so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of state of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and affairs; whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state he shall forthwith issue

a certificate of dissolution, which shall be published as above provided.

P. L. 1870, p. 8; Act of 1875, §34; P. L. 1877, p. 20; P. L. 1893, p. 445, §4.

It rests in the judgment of the directors whether the stockholders shall be called together under this section.

“It is well settled that the shareholders in a corporation cannot extinguish its charter or dissolve it, and that a court of equity cannot dissolve it at their instance. In the absence of a statutory provision the franchises can be declared forfeited and extinguished only at the suit of the State in an appropriate proceeding at law. * * * But where it plainly appears that the object for which the company was formed is impossible of attainment, it becomes the duty of the company's agents to put an end to its operations and wind up its affairs, and should they, even though supported by a majority of the shareholders, pursue operations which must eventually be ruinous, any shareholder feeling aggrieved would, upon plain equitable principle, be entitled to the assistance of this court, and a decree should be made compelling the directors to wind up the company's business and distribute the assets among those who are entitled to them, unless they can lawfully be used for other business purposes allowed by the charter.” *Benedict v. Columbus Construction Co.*, 49 N. J. Eq., 23, 36.

In the absence of fraud or acts beyond their lawful powers as stockholders, the minority have no standing to enjoin the exercise of the right of the majority to vote for dissolution. *Riker & Son Co. v. United Drug Co.*, 79 Atl. Rep., 1044.

Whatever may be the effect of the statutory provisions relating to the conduct of the corporation after dissolution or the carrying out of a plan of reorganization, it cannot govern the right of the stockholders to vote for dissolution. A court is not required to decide in advance questions which may arise in consequence of dissolution. *Id.*

The power of the directors and stockholders to dissolve the corporation being purely statutory, it is important that every requirement of the statute be strictly carried out.

It will be noted that two methods of dissolving the corporation are prescribed by this section:

1st. Where unanimous consent of the stockholders cannot be obtained.

2d. Where all the stockholders consent.

In the first case this section requires:

(1) A meeting and resolution of the board of directors; (2) the mailing and publication of a notice to and meeting of stockholders; (3) a consent in writing filed with the Secretary of State signed by two-thirds in interest of the stockholders; (4) the filing with

the Secretary of State of a list of the names and residences of the directors and officers certified by the president and secretary or treasurer; (5) the issuing by the Secretary of State of "a certificate that such consent has been filed," which certificate is not "a certificate of dissolution," but is a certificate preliminary to dissolution; (6) the publication of such certificate; (7) the filing of an affidavit of publication with the Secretary of State.

The certificate issued by the Secretary of State should comply with the provisions of Section 43a.

The dissolution will then be complete and of record.

In the second case, apparently, no meeting of directors is required nor any meeting of the stockholders; simply the filing of the written consent of all the stockholders verified by an officer of the company. There should be attached to all certificates of dissolution filed in the office of the Secretary of State a certificate of the Comptroller of the Treasury that all state taxes have been paid. P. L. 1900, p. 316. This certificate of dissolution must be published as in the first case, and affidavit of publication should be filed in the office of the Secretary of State.

Windmuller v. Standard Distilling and Distributing Company, 114 Fed. Rep., 491, held that there is no provision in the law which authorizes the court to review the judgment of the directors as to the advisability of dissolution, and that the fact that more than two-thirds of the stock of the company to be dissolved was held and owned by another corporation to whose interest it was that such dissolution should take place did not prevent such corporation from exercising its right under the statute to vote on such stock. The Standard Distilling and Distributing Company had guaranteed the payment of certain dividends on the preferred stock of the Spirits Distributing Company during the existence of said Distributing Company. The Distilling Company of America was the owner of a large majority of the shares of both the Standard Company and the Distributing Company and it was to the interest of the Distilling Company that the contract between the Standard Company and the Distributing Company providing for such guarantee should be abrogated.

Subsequently in Windmuller v. Standard Distilling & Distributing Company, et al., 115 Fed. Rep., 748, involving the same matters, the court said: "This court is inclined to concur with Judge Kirkpatrick in the conclusion that a majority stockholder may vote to dissolve even if he be influenced to that course by a wish to destroy a contract beneficial to the corporation but onerous to himself."

This section does not provide a substitute method of winding up the affairs of an insolvent corporation. Sections 63-86 provide for such. Fitzgerald v. State Mut. Bldg. & Loan Ass'n, 69 Atl. Rep., 564.

Where a sale of corporate property amounts to dissolution, a stockholder may restrain the proceedings unless the provisions of this sec-

tion have been followed. *Coler v. Tacoma Ry. & Power Co.*, 65 N. J. Eq., 347. As to lease for 999 years see *Dickinson v. Consolidated Traction Co.*, 119 Fed. Rep., 871.

Merger, carried out as provided in sections 105-107, is in effect a dissolution of the merging corporations. *Beling v. American Tobacco Co.*, 72 N. J. Eq., 32.

Directors and trustees upon dissolution, §53 et seq.

As to assent of stockholders, see Section 17.

32. Incorporators May Dissolve Corporation.

The incorporators named in any certificate of incorporation, before the payment of any part of the capital, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by oath, that no part of the capital has been paid and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.

P. L. 1893, p. 444.

III.—Elections; Stockholders' Meetings.

33. Stock and Transfer Books Must Be Kept in Registered Office; Annual List of Stockholders.

Every corporation shall keep at its principal and registered office in this state the transfer books in which the transfer of stock shall be registered, and the stock books, which shall contain the name and address of the stockholders, the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder; the directors shall cause the secretary, or other officer designated by them having charge of said books, to make, at least ten days before every election after the first election, a full, true and com-

plete list, in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the residence of each, and the number of shares held by each, which list shall at all times during the usual hours for business be kept at such principal and registered office, and open to the examination of any stockholder at said office, and if any officer having charge of such books or list shall, upon demand by any stockholder, refuse or neglect to exhibit such books or list, or submit them to examination as aforesaid, he shall for every such offense forfeit the sum of two hundred dollars, one-half thereof to the use of the state of New Jersey and the other half to him who will sue for the same, to be recovered by action of debt in any court of record, together with costs of suit, and the books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list, and to vote at such election; and the board of directors shall produce at the time and place of such election such books and list, there to remain during the election and the neglect or refusal of said directors to produce the same shall render them ineligible to any office at such election.

(As amended by Chap. 172, §3, Laws of 1898; P. L. 1898, p. 408.)

P. L. 1825, p. 81; P. L. 1841, p. 117; P. L. 1846, p. 70; R. S. (Ed. of 1846), p. 139, §1, §4; P. L. 1849, p. 306; Act of 1875, §§36-41.

The right to examine the stock and transfer books is neither an unqualified nor an unlimited right.

The application must be made by a stockholder with respect to his interest as such, or with a view to his status as a stockholder. A stockholder is not entitled to an open examination of the stock and transfer books for any purpose he may desire.

Where no transfer book is kept, but only a stock certificate book which is used as a transfer book, the presenting of such stock certificate book, provided the other requirements of this section are complied with, is sufficient to permit the election of directors. In re Election of Directors of United States Cast Iron Pipe Co., 74 N. J. Law, 315.

The Supreme Court in 1851, construing the statute in force at

that time, held that the provision requiring a full, true and complete list, etc., to be made out ten days before the election, was directory merely, and that a failure to comply with it would not render the election invalid. *Downing v. Potts*, 23 N. J. Law, 66, 72. The list of stockholders does not operate as a registry of voters. The right of the stockholder to vote does not depend upon his name being contained in the list; on the contrary, the statute expressly declares that the books of the corporation shall be the only evidence as to who are the stockholders entitled to vote. *Id.*, p. 73. See also *Matter of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539. But neglect or refusal of the directors in office to produce an alphabetical list of stockholders renders them ineligible for election, though the stock and transfer books are present at the election. *In re Schwartz & Gray, Inc.*, 77 N. J. Law, 415. The court has held that the evidence of right to vote under the statute comprised the stock ledger, the certificate book and the transfer book, but that the ledger is evidence only subordinate to and as supported by the other books, and that in case of dispute the transfer book must control the rest. *Downing v. Potts*, 23 N. J. Law, 66, 76; *In re Election of Cape May, etc., Nav. Co.*, 51 N. J. Law, 78, 81.

In *O'Hara v. National Biscuit Co.*, 69 N. J. Law, 198, the Supreme Court held (1) that this section does not extend the right of the stockholder to examine corporate books beyond that accorded to him by common law; (2) that the original purpose of the act which was to prevent fraudulent elections must be construed into the act, and (3) that the stockholder who acquired shares for the purpose of making an examination of the books of the company and for reasons not germane to his status as a stockholder, does not thereby become entitled to make such examination. The question has arisen whether the rights of examination of the corporate books may be limited by charter provisions. Although it would seem that such might be done, and although many certificates of incorporation have provided various limitations as to the right of a stockholder to examine the books, it appears in the case of *Hodgens v. United Copper Co.*, 67 Atl. Rep., 756, that such charter provisions do not limit the right of the stockholder to examine the books. The court pointedly remarks that the statute would be useless were it possible to limit the rights of the stockholder in the certificate of incorporation.

Where the failure to produce the books is not due to a fraudulent or improper motive, and where harm did not result from such failure, the stockholders who were entitled to vote according to the books, having been present, it has been held that it would be unfair to the voting stockholders to install directors who received a minority vote and that the proper remedy was the ordering of a new election. *Stratford v. Mallory*, 70 N. J. Law, 294.

Where an applicant seeking to examine the books shows by his own

testimony a lack of good faith and the corporation is willing to give him proper information, mandamus will not lie to compel an examination of books of account, papers, etc. *Bevier v. United States Wood Preserving Co.*, 69 Atl. Rep., 1008.

In New York it has been held that the right of the stockholder to inspect the stock book is absolute, without regard to the motive. *Henry v. Babcock & Wilcox Co.*, 196 N. Y., 302.

Where a stock certificate book alone is kept, which is used also as a transfer book, the presentation of such stock certificate book is a sufficient compliance with the statute, provided the other requirements are fulfilled. *In re Election of Directors of U. S. Steel Cast Iron Pipe Co.*, 74 N. J. Law, 315.

A certified public accountant will not be appointed at the instance of a writ to a stockholder, where the stockholder is familiar with the books and has sufficient intelligence to conduct the inspection. *Garcin v. Trenton Rubber Co.*, 60 Atl. Rep., 1098.

34. Directors; Election of, etc.

All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation; the poll at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all of the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors; provided, however, that **unless otherwise provided in the original or amended certificate of incorporation, or in the by-laws approved at a stockholders' meeting**, in all corporations formed under the provisions of this act, a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum.

(As amended by Chap. 52, Laws of 1902; P. L. 1902, p. 201.)

P. L. 1841, p. 116; R. S. (Ed. of 1846), p. 139, §2; Act of 1875, §37; P. L. 1898, p. 409; P. L. 1899, p. 262.

The 1899 amendment of this section limits the application of the

proviso to corporations organized under this act. The statute is different from the New York act, under which it was held in a recent case that the common law rule was in force and that any number of stockholders who attend a regularly called meeting, however small their holdings, can proceed to hold the election, and that a majority of those who vote can elect the board. *Matter of Rapid Transit Ferry Co.*, 15 App. Div., 530.

Under the amendment of 1902 (printed in bold-faced type) the certificate of incorporation, or by-laws, may provide that less than a majority shall be a quorum.

Election of directors: When irregularities will not invalidate.

The stockholders of a corporation organized under the General Act may, at a special meeting duly called for the purpose, increase the number of directors of the company by an amendment to the by-laws taking immediate effect. In the absence of other provision in the by-laws it would then be the right and duty of the stockholders to elect the additional directors, but it seems that such election should be held at a meeting subsequently called with due regard to Sections 33 and 36 of the Act. In the case at bar, however, all of the stock was represented at the meeting and voted on. It was held, therefore, that, notwithstanding the informality of the meeting, its acts would not be disturbed. *In re A. A. Griffing Iron Co.*, 63 N. J. Law, 168; *aff'd Id.*, 357.

An election of directors, unless held at the annual meeting of stockholders or at a special meeting, the notice of which expressly states the object of the meeting and the business to be transacted, is void. *Dunster v. Bernards Land & Sand Co.*, 74 N. J. Law, 132.

Corporation in hands of receiver may elect directors.

A corporation in the hands of a receiver can legally hold an election for directors, and the court may order such election. *Lehigh Coal & Navigation Co. v. Central R. R. Co. of N. J.*, 5 N. J. L. J., 214.

35. Inspectors of Election.

No person who is a candidate for the office of director shall act as judge, inspector or clerk of any election for directors; and if any candidate shall so act and be elected, his election shall be void, and the directors shall not appoint such person a director within twelve months next succeeding; this section shall not apply to the first election of directors.

P. L. 1825, p. 82; R. S. (Ed. of 1846), p. 139, §5; P. L. 1870, p. 27; Act of 1875, §42.

35a.* Cumulative Voting.

The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this state and thereunder issuing or authorized to issue shares of its capital stock, may provide that at all elections of directors, managers or trustees, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors, managers or trustees to be elected, and that he may cast all of such votes for a single director, manager or trustee or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting.

2. This act shall not be construed as affecting in anywise the determination of whether or not the right of cumulative voting has been heretofore granted by implication or the right of cumulative voting, if any, granted specifically by special charter or certificate of incorporation.

(“An act to provide in terms for cumulative voting in corporations issuing or authorized to issue shares of capital stock.” P. L. 1900, p. 418.)

See *Looker v. Maynard*, 179 U. S. 46.

36. Regulations as to Voting.

Unless otherwise provided in the charter, certificate or by-laws of the corporation, at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy for each share of the capital stock held by him, but

* Arbitrary number; section inserted here merely for convenience of reference.

no proxy shall be voted on after three years from its date; nor shall any share of stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

P. L. 1825, p. 83; P. L. 1841, p. 117; R. S. (Ed. of 1846), p. 139, §3; Act of 1875, §38.

A stockholder is not entitled to vote unless he is registered on the books on the day the election is held. *Johnston v. Jones*, 23 N. J. Eq., 216. This section applies only to voting at elections. *Chapman v. Bates*, 61 N. J. Eq., 658, 666.

See also §17.

Voting by proxy.

Absence of a seal does not invalidate a proxy for use at the election of directors. *Hankins v. Newell*, 75 N. J. Law, 26.

A proxy executed by a majority of a board of directors becomes invalid when a part of such majority, sufficient to reduce the remainder to a minority, revokes such execution. *In re Delaware River & A. R. Co.*, 76 N. J. Law, 163.

It is against the settled rules governing the control of corporations that an irrevocable power of voting or directing votes on stock should be vested in a person who is neither interested in the stock nor a representative of persons interested. *Clowes v. Miller*, 60 N. J. Eq., 179, *White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq., 178.

Voting pools or trusts.

Of late years there have come to the courts several cases involving the legality of voting pools or trusts. Briefly stated, the scheme is for several holders of shares to enter into an agreement to transfer their shares to a trustee, who has power to vote on them and to the extent of the shares so held by him, by the election of directors, dictate the policy and management of the company.

The trustee issues to the shareholders in exchange for their shares trust certificates, which are usually made transferable in the same manner as stock. The duties of the trustee are fixed by the trust agreement.

Four cases involving such agreements have recently come before the Courts of New Jersey.

The first case, *Cone v. Russell*, 48 N. J. Eq., 208, was decided in 1891. There the agreement was held to be void because the objects intended to be derived from the agreement were bad as against public

policy and the carrying out of which also involved a breach of trust by one of the parties. It was not held that a voting trust was in itself void as against public policy. Vice-Chancellor Pitney said: "This conclusion [that the contract was void as against public policy] does not reach so far as to necessarily forbid all pooling or combining of stock, where the object is to carry out a particular policy with the view to promote the best interests of all the stockholders. The propriety of the object validates the means and must affirmatively appear." *Id.*, p. 215.

In the second case, *White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq., 178, decided in 1893, the agreement was declared to be invalid because it did not by its terms extend to certain shares of the company issued after the execution of the agreement directly to persons who were not parties to the agreement.

It was held to be immaterial whether they had or had not notice of the trust agreement.

"As such holders they were entitled to have the other shares of stock in the company stand upon an equal footing," and they were deprived of all voice in the management of the company. The issuing of the stock was, therefore, held to be "a waiver and abandonment by the directors who united in issuing it, of their rights under the contract in question."

The question again came before the Court of Chancery in the case of *Kreissl v. Distilling Company of America*, 61 N. J. Eq., 5, in which Chancellor Magie stated the principle as follows:

"Under the statutes permitting stockholders to give proxies and under the doctrine of the cases in this court to which I have referred, I conceive it is impossible to maintain that a proxy which confides to the attorney thereunder the power to exercise his judgment in certain cases, and so separates the voting power from the ownership of the stock, is void, *per se*. The principal may, doubtless, limit the power conferred to voting on certain questions and in a certain way. But if, as is customary, the power is unlimited, it must be exercised by the judgment and determination of the attorney on any questions which may be presented.

"The power of revocation is deemed sufficient to protect the rights of other stockholders. If, however, the stockholder undertakes to make irrevocable his grant of power and to denude himself for a fixed period of the power to judge and determine and vote as to the proper management and control of the affairs of the corporation, then whether the grant of power is good or not must depend on the purposes for which it is given.

"When the scheme devised does not embrace a grant of irrevocable powers by proxy, but seeks a similar object by the creation of a trust and the appointment of a trustee, to whom the title of the stock is conveyed, a like doctrine must be applied. If no provision is made

for the conduct of the trustee, at least he would be bound to vote on the stock held in trust in accordance with the expressed wishes of the cestui que trust; but if the transfer of the legal title to the stock is made and accepted under an agreement of the stockholder which deprives him of all power to direct the trustee, and all opportunity to exercise his own judgment in respect to the management of the affairs of the corporation, then whether the transaction is open to the objection of other stockholders, as depriving them of the right they have to the aid of their co-stockholders, must be dependent upon the purposes for which the trust was created, and the powers that were conferred.

“If stockholders, upon consideration, determine and adjudge that a certain plan for conducting and managing the affairs of the corporation is judicious and advisable, I have no doubt that they may, by powers of attorney, or the creation of a trust, or the conveyance to a trustee of their stock, so combine or pool their stock as to provide for the carrying out of the plan so determined upon. But if stockholders combine by either mode to entrust and confide to others the formulation and execution of a plan for the management of the affairs of the corporation, and exclude themselves by acts made and attempted to be made irrevocable for a fixed period, from the exercise of judgment thereon, or if they reserve to themselves any benefit to be derived from such a plan to the exclusion of other stockholders who do not come into the combination, then, in my judgment, such combination and the acts done to effectuate it, are contrary to public policy, and other stockholders have a right to the interposition of a court of equity to prevent its being put into operation.”

The agreement in that case was held invalid because it provided for the absolute management and control of the company during a fixed period of time by the judgment and determination of the voting trustees, and because by its terms stockholders who did not enter into it were expressly declared to be entitled to no benefits under it.

The Court of Errors and Appeals in the case of *Chapman v. Bates*, 61 N. J. Eq., 667, said:

“We recognize the principle laid down in *Cone v. Russell*, 48 N. J. Eq., 208, and *White v. Thomas Tire Co.*, 52 N. J. Eq., 179, that every stockholder is entitled to the benefit of the judgment of every other stockholder in the management of the affairs of the corporation, but in this case complaint is not made by one claiming that injury has been done to his interest by reason of a stockholder divesting himself of control of his stock, but by one of the very parties who has entered into this agreement and to which his consent has been given. He cannot complain of the injury done to his interests by this action for he is a consenting party. Such arrangements with regard to the control of stock as contemplated in this proxy and power of attorney, and which have been denominated pooling agreements, are not neces-

sarily void as being against public policy. In the case of *Cone v. Russell*, 48 N. J. Eq., 208, the Court, while holding the agreement in that case void as against public policy, expressly holds that this conclusion does not reach so far as to necessarily forbid all pooling or combining of stock where the object is to carry out a particular policy with a view to promote the best interests of all the stockholders. The propriety of the object validates the means and must affirmatively appear.

“The following are cases in which pooling agreements have been held valid: *Brown v. Pacific Mail Steamship Co.*, 5 Blatch, 525; *Smith v. Francisco & N. R. R. Co.*, 115 Cal. 584; s. c., 35 L. R. A., 309; *Mobile & Ohio R. R. Co. v. Nicholas*, 96 Ala., 92; *Hey v. Dolphin*, 92 Hun. (N. Y.), 230.

“No illegal purpose is manifest upon the face of this agreement, nor has any been alleged in the bill. It appears to be consistent with the purposes for which the company was created, and whose continuance appears to be necessary for the advantage of all who are interested in the development of the property; it is expressly declared to be for the benefit of all who join in it. No stockholder is prevented from joining in this agreement, and no stockholder who has not availed himself of the opportunity to join in it is excluded from the benefit of it; no one appears to have been injured by it. The complainant does not allege in what way he is damaged by its continuance; he with about four hundred out of five hundred stockholders executed it, and he alone of all the stockholders asks to have it revoked. We do not think he should be allowed to revoke it.”

Again, in the case of *Warren v. Pim*, 66 N. J. Eq., 353, the Court of Errors and Appeals held that the validity of a voting trust depended upon two conditions: first, that the holders of all the shares of the corporation should have an equal privilege, after information, to come into the trust agreement; second, that the object and aim of the trust should be the equal benefit of all the shares. See 19 Yale Law Journal, 343; *Knickerbocker Investment Co. v. Voorhees*, 100 App. Div. (N. Y.), 414.

As to the rights of the holder of a “voting trust certificate,” see *O’Grady v. U. S. Independent Telephone Co.*, 71 Atl. Rep., 1040.

Voting qualification of stockholders.

To enable a person to vote as a stockholder, it is not necessary that he have a certificate of stock. A subscriber for stock is a stockholder, even though he has paid nothing on his stock, and as such he is entitled to vote. It is necessary, however, that he should be a stockholder of record on the books of the company, whether such books be the original books of subscription, if any, or books containing the original entries of such subscription. In cases of dispute the transfer book must control. See Section 40. *Downing v. Potts*, 23 N. J. Law,

66; *Am. Pig Iron Storage Co. v. Assessors*, 56 N. J. Law, 389, 393.

In New York, however, it has been held that the relation of stockholder in a corporation is created by the subscription for stock. *Beals v. Buffalo Expanded Metal Const. Co.*, 49 App. Div. (N. Y.), 589. And so held even though no payment has been made on the subscription. *Wheeler v. Millar*, 90 N. Y. 353.

The fact that a stockholder is indebted to the company on his subscription does not impair his right to vote. *Savage v. Ball*, 17 N. J. Eq., 142; *Downing v. Potts*, *supra*.

Stock must be voted by the actual owner unless disqualified by law. A corporation cannot, through another corporation whose stock it owns, hypothecate its own stock and thus enable the pledgees to vote, the power of a corporation to vote its own stock being limited by Section 38. *Thomas v. International Silver Co.*, 72 N. J. Eq., 224.

Owners of shares are under no disability to vote because they are also directors. *United States Steel Corporation v. Hodge*, 64 N. J. Eq., 807.

37. Voting Powers of Executors and Trustees. Hypothecated Stock.

Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation, and may vote thereon as a stockholder, and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all such meetings, and may vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said stock and vote thereon.

P. L. 1846, p. 72; P. L. 1849, p. 308; Act of 1875, §§39, 40.

As to investments by administrators, executors, etc., see P. L. 1899, p. 236.

Administrators and executors.

A formal transfer of stock on the books of the company is not necessary to enable an executor, administrator, etc., to vote. The corporation books are evidence of the ownership of the stock by the testator or intestate, and this section gives to the executor or other representative *virtute officii* the right to vote thereon in his representa-

tive capacity. *In re Election of Cape May, etc., Nav. Co.*, 51 N. J. Law, 78.

The right is held to extend to foreign executors. The letters testamentary issued by the foreign court were held to be conclusive proof of the executor's title to the stock, and of his right to vote in respect thereof. *Id.*

In New York an administrator or executor may vote at corporate elections, and a formal transfer to him on the books is unnecessary. *In re North Shore S. I. Ferry Co.*, 63 Barb. (N. Y.), 556; *In re Hastings*, 120 App. Div. (N. Y.), 756.

Pledgor and Pledgee.

One who lends money on the pledge of stock held in trust will be held to have had notice that the trustee was abusing his trust and applying the money lent to his own purposes when the certificates of the stock pledged show on their face that the stock pledged is held in trust (though the name of the cestui que trust does not appear), and when the loan was apparently for the private purposes of the borrower, and that fact would have been revealed by inquiry. *Gaston v. American Exchange Nat'l Bank*, 29 N. J. Eq., 98.

As between the corporation and the parties to a pledge of stock the corporation is not intended by this section to have the burden of determining whether the transfer was in pledge or not. The duty of the corporation is to recognize the registered holder shown on its transfer books. But where the pledgee is under obligation to give the pledgor a proxy equity will so decree on application. *Canadian Imp. Co. v. Lea*, 69 Atl. Rep., 455, 462.

Where the owner of stock is disqualified to vote it, the disqualification cannot be removed by simply hypothecating the stock as collateral, the right given to the pledgor of stock to empower the pledges to vote thereon is limited to pledgors who themselves are empowered to vote the stock which they own. *Thomas v. International Silver Co.*, 72 N. J. Eq., 224.

See *Gorman-Wright Co. v. Wright*, 134 Fed. Rep., 363.

A trustee, pending the execution of a trust, has a voting power on the stock held in trust and is under obligation to the cestui que trustent to exercise the power in accordance with his best judgment. *Clowes v. Miller*, 60 N. J. Eq., 179.

It is not a wrongful conversion for a pledgee to exchange the certificates which he holds for the same number of new certificates, where the company, by legislative authority, has reduced the nominal value of its shares of stock by reducing its capital. *Donnell v. Wyckoff*, 49 N. J. Law, 48.

This section does not cast the burden upon the corporation of determining whether a transfer is in pledge or not. The duty of the

corporation is to recognize only the registered holder shown on its transfer books. *Canadian Imp. Co. v. Lez*, 69 Atl. Rep., 455.

Partner may vote for the firm.

One partner of a firm, which owns stock in a corporation, entered on the corporate books in the partnership name, may vote in behalf of the firm. *Kenton Furnace R. & Mfg. Co. v. McAlpin*, 5 Fed., 737.

38. Shares of stock of a corporation belonging to said corporation shall not be voted upon directly or indirectly.

P. L. 1825, p. 82; R. S. (Ed. of 1846), p. 139, §6; Act of 1875, §43.

Purchase by a corporation of its own stock.

"Under the corporation act of 1896 there is an implied grant of power to corporations to purchase shares of their own capital stock, provided such purchase is required for legitimate corporate purposes, but not otherwise." See *Knickerbocker Importation Co. v. Assessors*, 74 N. J. Law, 583, 586, citing *Morawetz on Private Corporations*, Section 112 (2nd Ed.); *Maryland Trust Co. v. National Mechanics' Bank*, 63 Atl. Rep., 70.

It is doubtful whether the right to purchase its own shares exists when such a purchase would disable the corporation from paying its debts in full or where it would convert stockholders into creditors on an equality with other creditors. *Oliver v. Rahway Ice Co.*, 64 N. J. Eq., 596.

See also *Chapman v. Ironclad Rheostat Co.*, 62 N. J. Law, 497; *Berger v. U. S. Steel Corp.*, 63 N. J. Eq., 809.

The company may not vote upon such shares either directly or indirectly.

McNeely v. Woodruff, 13 N. J. Law, 352, 360; *Matter of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539; see also *Hilles v. Parrish*, 14 N. J. Eq., 380; *O'Connor v. International Silver Co.*, 68 N. J. Eq., 67; *aff'd Id.*, 680; *Thomas v. International Silver Co.*, 72 N. J. Eq., 224. This includes all stock standing in the name of an officer, a trustee, or in the name of any person, if the stock is the property of the company.

Lien on stock.

A corporation has no lien on its stock held by its debtor. *D. L. & W. R. R. Co. v. Oxford Iron Co.*, 38 N. J. Eq., 340, and cases cited. Except, perhaps, where there is a provision in the certificate of incorporation giving the company a lien. *Drexel v. Long Branch Gas Co.*, 3 N. J. L. J., 250.

39. Directors Shall Be Stockholders.

No person shall be elected a director of any corporation issuing stock unless he shall be, at the time of his election, a bona fide holder of some of the stock thereof; and any director ceasing to be a bona fide holder of some of the stock thereof shall cease to be a director; any corporation may, by its certificate of incorporation or by-laws, determine how many shares a person shall hold to qualify him to be a director.

Act of 1875, §§47, 48.

With respect to the qualification of a director, the company's books are not conclusive. A person may be qualified to be a director whose vote cannot be received at the election. He may be a bona fide holder of stock at that time, and yet be disqualified from voting on it by reason of the transfer to him not being entered on the books. *Matter of Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 540.

“The question of the competency of a person for the directorship is one exclusively of judicial cognizance over which the inspectors of election have no jurisdiction. * * * A stockholder may have purchased stock with a view of becoming a director, or have obtained it by gift, or he may hold it upon a trust, and be qualified to be a director. If the stock was legally issued and is not the property of the corporation, and the legal title is in him, he is *prima facie* capable of being a director, and his right to be a director in virtue of his legal title to such stock can be impeached only by showing that title was put in him colorably with a view to qualify him to be a director for some dishonest purpose, in furtherance of some fraudulent scheme touching the organization or control of the company, or to carry into effect some fraudulent arrangement with the company.” *Matter of Election of St. Lawrence Steamboat Co.*, *supra*; see also *In re Leslie*, 58 N. J. Law, 609, 618; *Election of Cape May Nav. Co.*, 51 N. J. Law, 78.

The court has held that where one is made a director of a corporation solely to make up the number of directors required by law, his right to hold such office cannot be impeached for fraud at the instance of one who was a consenting party to his admission into the company and his election to the office. *In re Leslie*, *supra*.

When a director makes an assignment of his estate for the benefit of creditors he ceases to be a director *de jure*, and the company may declare his office vacant and elect his successor, but as to third parties dealing in good faith with the company, without notice of any infirmity

in the title of the director, he must be regarded as a director de facto. *Kuser v. Wright*, 52 N. J. Eq., 825, reversing *Wright v. First Nat'l Bank*, 52 Id., 392.

A person is not a director, though nominated and elected, until he has accepted the office either expressly or impliedly. *Whittaker v. Amwell Nat'l Bank*, 52 N. J. Eq., 400, 415.

This section is held not to apply to the first directors of a consolidated company. *Camden, etc., Co. v. Burlington Carpet Co.*, 33 Atl. Rep., 479.

40. Stock Books to Determine Who May Vote.

In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.

Inspectors of election.

The statute does not in express language require inspectors of election; the election must be by ballot, unless the certificate of incorporation otherwise provides (Sec. 34). It is usual, however, to provide in the by-laws that at all elections of directors, two judges or inspectors shall be appointed by the chairman of the meeting.

They are ordinarily sworn to the faithful performance of their duty, and when the polls are closed they present a written report. Except at the first election, no person who is a candidate for election as director can be an inspector, and if elected his election is void (Sec. 35). The powers of inspectors are purely ministerial. They must receive the votes, count them and certify to the result.

If the right to vote is challenged they must refer to the books and ascertain whether the person offering the vote is a registered holder of stock. The books of the company are the only evidence they may receive on this question, and where this evidence is conflicting the transfer book controls. If a share has been transferred within twenty days next preceding the election, any vote offered on it must be rejected. *Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 539; *Downing v. Potts*, 23 N. J. Law, 66; *In re Delaware River & A. R. Co.*, 76 N. J. Law, 163. Section 36, ante.

Representatives, executors, guardians and the like must be permitted to vote on the shares they represent upon producing satisfactory evidence of their representative capacity. See Section 37; *Election of Cape May, etc., Nav. Co.*, 51 N. J. Law, 78.

Inspectors of election cannot reject a vote offered by proxy because the written proxy was not acknowledged or proved. If the proxy is regular in form and apparently the act of the stockholder, and not more than three years old, the inspectors should receive the votes offered under it. Election of St. Lawrence Steamboat Co., *supra*. For New York see *In re Cecil*, 36 Howard's Pr. (N. Y.), 477.

Evidence of right to vote.

Under the statute the books of the corporation constitute the only evidence as to who are stockholders entitled to vote at an election of directors. *In re Election of Directors of Cedar Grove Cemetery Co.*, 61 N. J. Law, 422; *Archer v. Am. Water Works Co.*, 50 N. J. Eq., 33. See also *Johnston v. Jones*, 23 N. J. Eq., 216.

Inspectors are bound by the stock and transfer books in determining who is entitled to vote. *In re Delaware and Atlantic Ry. Co.*, 76 N. J. Law, 163.

At an election of directors of a corporation, two sets of directors were elected, one by persons shown by the original stock book, ledger and transfer book of the company to be the owners of a majority of the stock, and the other set by persons shown by such books to own only a minority of the stock, but by another stock book, specially prepared for the election, shown to own a majority of the stock. Held, that the directors elected by the persons shown by the original books to own a majority of the stock were the directors, under Corporation Act, Sections 33, 40, providing that the stock books of a corporation, and, in case of a discrepancy between them, the transfer book, shall determine who are stockholders entitled to vote for directors. *In re Election of Directors of Consolidated Telephone & Telegraph Co.*, 43 Atl. Rep., 433.

41. Failure to Elect Directors.

If the election for directors of any corporation shall not be held on the day designated by the act or certificate of incorporation or by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but any justice of the supreme court may summarily order an election to be held upon the application of any stockholder, and

may punish the directors for contempt of court for failure to obey the order.

R. S. (Ed. of 1846), p. 139, §9; P. L. 1874, p. 37; Act of 1875, §46.

The notice of a special meeting for the election of directors must specifically state business to be transacted at such meeting. *Dunster v. Bernards Land & Sand Co.*, 74 N. J. Law, 132.

See *Hoboken Building Ass'n v. Martin*, 13 N. J. Eq., 427; *In re Consolidated Telephone & Telegraph Co.*, 43 Atl. Rep., 433.

In New York it has been held that directors holding over, at the end of their term of office, and continuing to act as directors are such *de jure* until their successors are chosen. *Phila. & Rdg. C. & I. Co. v. Hotchkiss*, 82 N. Y., 474.

42. Supreme Court May Summarily Investigate Complaints Touching Elections.

The supreme court, upon application of any person who may be aggrieved by or complain of any election, or any proceeding, act or matter in or touching the same, reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, and in a summary way hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order, and give such relief in the premises as right and justice may require; the court may, if the case require it, either order an issue to be made up in manner and form as it may direct, to try the rights of the respective parties to the office or franchise in question, or may give leave to exhibit or direct the attorney-general to exhibit, an information in the nature of a *quo warranto* in relation thereto.

P. L. 1825, p. 82; R. S. (Ed. of 1846), p. 139, §7; Act of 1875, §44.

A stockholder is a person aggrieved within the meaning of the

statute. Election of St. Lawrence Steamboat Co., 44 N. J. Law, 529. The court may set aside the election and order the admission as directors of the persons properly elected. In re Election of Cape May, etc., Nav. Co., 51 N. J. Law, 78. See also In re Consol. Telephone & Telegraph Co., 43 Atl. Rep., 433.

The inquiry before the court is limited to the consideration whether or not the election complained of has been conducted according to the statutory provisions. In re Leslie, 58 N. J. Law, 609.

Where the stockholders of a corporation assemble in two bodies at the time and place appointed for an election of directors, and cast their ballots at separate polls, the court, in ascertaining the result of the election pursuant to investigation under Section 42 of the General Act, may consider the ballots cast at both polls. In re Election of Directors of Cedar Grove Cemetery Co., 61 N. J. Law, 422.

Quaere. Do directors, who are acting as trustees in winding up a defunct corporation, have power to vote stock of other corporations owned by the defunct corporation? In re Delaware River and Atlantic Ry. Co., 76 N. J. Law, 163.

Even if it be held that the directors of a defunct corporation may vote the stock of other corporations held by the defunct corporation, still the revocation of a proxy executed by the board, by a sufficient number to reduce the remainder to a minority, will render the proxy invalid. *Id.*

Under a like statute of New York state it was held that the section only authorizes an application to the court to establish or set aside an election in a summary way, and not by mandamus. *Peo. ex rel. Putzel v. Simonson*, 61 Hun., 338.

The acceptance of illegal votes in favor of a candidate who has received a majority of all legal votes cast will not defeat his election. In re *Argus Co. v. Manning*, 138 N. Y., 557.

An election of directors will be set aside when it appears that the election was not held at the annual meeting of stockholders nor at a special meeting called for the purpose on notice to the stockholders nor with their unanimous consent. *Dunster v. Bernards Land Co.*, 74 N. J. Law, 132.

This section applies to all corporations in which there are shares of capital stock held by individuals as private property. In re *Newark Library Ass'n*, 64 N. J. Law, 265.

Equity will not decide which of two sets of officers claiming to be the officers *de jure* of a corporation are entitled to the offices, unless some other equitable matter is involved and requires the decision of such question. *St. Patrick's Alliance of America v. Byrne*, 59 N. J. Eq., 26.

To secure the rights guaranteed by this section, the court is free to deal with an election, not necessarily in accordance with strict legal rules, but according to the substantial rights and equities. *Stratford v. Mallory*, 70 N. J. Law, 294.

Quo warranto is the proper remedy by which to test the title to office in a private corporation. *Hankins v. Newell*, 75 N. J. Law, 26. See also *In re Jersey City Paper Co.*, 69 N. J. Law, 594.

42a.* Chancellor May Summarily Investigate Complaints Touching Elections. May Restrain Persons From Exercising Offices Pending Investigation.

Any person who may be aggrieved by or complain of any election for directors, or any proceeding, act or matter in or touching the same, may make application by petition to the chancellor, who, after requiring reasonable notice to be given to the adverse party or to those who are to be affected thereby, shall proceed forthwith and in a summary way to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order and give such relief in the premises as right and justice may require.

2. Pending the hearing and determination of any application to investigate an election of directors the chancellor may by order restrain the persons claiming to have been elected to the office of director from exercising any of the functions and duties of the office.

(Supplement of March 24, 1899; P. L. 1899, p. 563.)

The court has held that this act is unconstitutional; that the power to inquire into and adjudicate upon the validity of an election of officers is by the constitution vested solely in the Supreme Court, and that the Legislature has no power to vest any part of that judicial jurisdiction in any other tribunal. *Goldstein v. Ewing*, 62 N. J. Eq., 69. Before this act was passed the court refused to take jurisdiction of cases affecting corporate elections unless there was some element of fraud, breach of trust, or breach of agreement, or other specific ground for equitable relief. See *Johnston v. Jones*, 23 N. J. Eq., 216,

* Arbitrary number; section inserted here merely for convenience of reference,

226; *Mechanics' Nat'l Bank v. Burnet Mfg. Co.*, 32 N. J. Eq., 236, 239; *Kean v. Union Water Co.*, 52 N. J. Eq., 813; *Owen v. Whitaker*, 20 N. J. Eq., 122.

43. Annual Report to Secretary of State.

Every domestic corporation and every foreign corporation doing business within this state, shall file in the office of the secretary of state within thirty days after the first election of directors and officers and annually thereafter within thirty days after the time appointed for holding the annual election of directors, a report authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating:

I. The name of the corporation;

II. The location (town or city, street and number, if number there be) of its registered office in this state, and the name of the agent upon which process against the corporation may be served;*

III. The character of its business;

IV. The amount of its authorized capital stock, if any, and the amount actually issued and outstanding;

V. The names and addresses of all the directors and officers of the company and when the term of office of each expires;

VI. The date appointed for the next annual meeting of the stockholders for the election of directors;

VII. Whether the name of such corporation has been at all times displayed at the entrance of its registered office in this state, and whether such corporation has kept at this registered office in this state a

*See *Nickolson v. Wheeling L. E. & P. Coal Co.*, 110 Fed. Rep, 105.

transfer book in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law; provided, however, that the requirement of this subdivision shall not apply to foreign corporations nor to any railroad or canal corporation; and further provided, that no part of this section shall apply to corporations as are now by law under the supervision of the department of banking and insurance; if such report is not so made and so filed the corporation shall forfeit to the state two hundred dollars, to be recovered with costs in an action of debt, to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated; and further provided, if such report be not so made and filed, all of the directors of any such domestic corporation who shall wilfully refuse to comply with the provisions hereof and who shall be in office during the default shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the company as directors or otherwise; no director shall be thus disqualified for the failure to make and file such report if he shall file with the secretary of state before the time appointed for holding the next election of directors after said default, a certificate stating that he has endeavored to have such report made and filed, but that the officers have neglected to make and file the same, and shall report the items required to be stated in such annual report so far as they are within his knowledge or are obtainable from sources of such information open to him, verified by him to be true to the best of his knowledge,

information and belief; the secretary of state shall upon application furnish blanks in proper form and shall safely keep in his office all such reports and shall prepare an alphabetical index thereof, which reports and index shall be open to the inspection of all persons at proper hours.

2. In case any domestic corporation, or any foreign corporation authorized to transact business in this state, shall fail to file such report within the time required by this section, or in case the agent of any such corporation designated by any such corporation as the agent upon whom process against the corporation may be served shall die, or shall resign, or shall remove from the state, or such agent cannot with due diligence be found, it shall be lawful, while such default continues, to serve process against any such corporation upon the secretary of state, and such service shall be as effective to all intents and purposes as if made upon the president or head officer of such corporation, and within two days after such service upon the secretary of state as aforesaid, it shall be the duty of the secretary of state to notify such corporation thereof by letter directed to such corporation at its registered office, in which letter shall be inclosed a copy of the process or other paper served, and it shall be the duty of the plaintiff in any action in which said process shall be issued to pay to the secretary of state, for the use of the state, the sum of three dollars, which said sum shall be taxed as a part of the taxable costs in said suit if the plaintiff prevails therein; the secretary of state shall keep a book to be called the "process book," in which shall be recorded alphabetically, by the name of the plaintiff and defendant therein, the title of all causes in which processes have been served upon him, the test of the process so served and the re-

turn day thereof, and the date and hour when such service was made.

3. The terms "principal office," "principal office in this state" and "registered office," wherever used in this act, shall be construed as synonymous terms.

(As amended by Chap. 124, Laws of 1900; P. L. 1900, p. 313.)

P. L. 1872, p. 27; Act of 1875, §49; P. L. 1877, p. 103; P. L. 1894, p. 194; P. L. 1895, p. 11.

As to when stock is "issued," see *Am. Pig Iron Storage Co. v. Assessors*, 56 N. J. Law, 389, 393; *Knickerbocker Importation Co. v. Assessors*, 74 N. J. Law, 583.

For the addresses of the directors and officers it is permissible to state the post office address of the registered office of the company within this state. (Section 43a.)

The failure of the directors to file the report of the election of directors must be wilful in order to make the directors failing to file the same ineligible to re-election at the next annual election. In *re Election of Directors of Brooklyn Baseball Club*, 75 N. J. Law, 64.

In *Lenhart & Hoffman v. American School Furniture Co.*, 32 N. J. L. J., 49, the U. S. Circuit Court for New Jersey held that under the statute a registered agent of a domestic corporation should be appointed or the appointment renewed annually, the presumption being that such agency does not continue indefinitely.

Failure to file the report giving the names and addresses of the directors, raises the presumption that no election was held during the year and that the directors whose names appear on the statement last filed have held over. *Appleton v. American Malting Co.*, 65 N. J. Eq., 375.

This provision renders it unnecessary to disclose the non-residence of any stockholder or officer, and is for the purpose of protection against the tax authorities of other States, which, especially New York, were said to have caused an examination to be made of the records of the State of New Jersey in order to secure the names of stockholders residing in their respective states upon whom to serve notice of taxation both of the corporation and of the stockholders.

43a.* Every Certificate and Report Must Give Address of New Jersey Office and Name of Agent.

Every certificate, report or statement now or hereafter required by any law of this state to be made to

* Arbitrary number; section inserted here merely for convenience of reference.

any officer or department of this state, or to be published, filed or recorded by any corporation, domestic or foreign, shall, in addition to the other matter required by law, set forth the location (town or city, street and number, if number there be) of its principal office in this state, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served.

No certificate, statement or report shall hereafter be received, filed or recorded by any officer or in any office of this state unless the same shall comply with the foregoing provisions.

Such office of any domestic corporation so registered shall be and be deemed the office and post-office address of such domestic corporation, its officers, directors and stockholders, and whenever by the provisions of any law of this state any notice is required to be given to the corporation, its officers, stockholders or directors, such notice shall be sent by mail or otherwise, as the law may require, to such registered office, and such notice so given shall be and be deemed sufficient notice.

Whenever by any law of this state in any such certificate, report or statement, the residence or post-office address of any incorporator, stockholder, director or other officer is required to be set forth or given, it shall be and be deemed a full compliance with such provision to give as such post-office address, the post-office address of the registered office of the company within this state.

(Supplement of April 20, 1898; P. L. 1898, p. 410.)

“The Chancery Act (Act April 3, 1902, P. L., p. 511, Art. 2, §5), providing for the method of service of process for appearance upon the defendant, does not mention corporations by name, but in the absence of statutory enactment the common law principle applies that ‘the name “person” in a statute includes corporations if they fall

within the general reason and design of the act.' U. S. v. Amedy, 11 Wheat. (U. S.), 392; 6 Law Ed., 502.'" Martin v. Atlas Estate Co., 72 N. J. Eq., 416, at 418.

This section does not provide an exclusive method of acquiring jurisdiction over corporations in this state. It merely creates an additional agent of the corporation upon whom process "may" be served. Although service on an agent is not strictly personal service on a corporation, Laufman & Co. v. Hope Mfg. Co., 54 N. J. Law, 70, still, service "on any officer or agent of the company whose duty it is, either in his official capacity or by virtue of his employment to communicate the fact of such service to the governing body of the corporation, is tantamount to personal service in the case of a natural person.'" Martin v. Atlas Estate Co., Id.

As to the effect of the appointment of a receiver on the registered agent's authority to receive process for the company, see Nickolson v. Wheeling, etc., Co., 110 Fed. Rep., 105.

Service of notice made on the registered agent of a corporation though not at the registered office is good service. Phila. & Camden Ferry Co. v. Intercity Link R. Co., 73 N. J. Law, 86; aff'd 74 Id., 594.

The agent named must be a natural person, resident of the state, or a corporation having specific power to act as such agent. This power is limited to trust companies. See note, p. 144.

As to service of subpoena, writs, etc., see Sec. 87b.

43b.* Every Certificate and Report Must Be in the English Language.

Every certificate of incorporation including the corporate name or title, every amended or supplemental certificate, and every report, statement or other paper relative to or affecting corporations, domestic or foreign, now or hereafter required by any law of this state to be made to any officer, or recorded or filed in any office of this state, shall be in the English language; no certificate, statement, report or paper relative to or affecting corporations, shall hereafter be received, recorded or filed by any officer or in any office of this state unless the same shall comply with the foregoing provisions.

("Act relative to corporations," P. L. 1903, p. 231.)

* Arbitrary number; section inserted here merely for convenience of reference.

44. Stockholders' Meetings Must be Held at Registered Office in New Jersey. Corporations Must Maintain a New Jersey Office. Directors May Meet Out of State.

In all cases where it is not otherwise provided by law, the meetings of the stockholders of every corporation of this state shall be held at its principal office in this state; the directors may hold their meetings, and have an office, and keep the books of the corporation (except the stock and transfer books) outside of this state, if the by-laws or certificate of incorporation so provide; every corporation shall maintain a principal office in this state, and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same, and for the transfer of stock; the court of chancery or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said corporation to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

P. L. 1849, p. 215; Act of 1875, §50.

The stockholders' meeting must be held at registered office in New Jersey.

Prior to February 28, 1849, there appears to have been no statutory restriction upon New Jersey corporations as to where they should hold their stockholders' meetings.

Many special charters had been granted to corporations, designating

the place of meeting of the stockholders. In 1849 an act was passed providing—

“That all companies incorporated under the laws of this state, whose charters do not designate their places of meeting, shall hold their business meetings, the meetings of their directors, and shall keep their office and the books of the company, in the state of New Jersey; provided that this act shall not apply to any corporations whose charters are not subject, by the terms thereof, to be altered, modified or repealed, or to any incorporated steamboat companies, or to any ferry company, on the waters between this state and either of the adjoining states.”

P. L. 1849, p. 215.

For the proviso in this act there was eventually substituted the words “in all cases where not otherwise specified by law.” Subsequent decisions construed this language to apply to corporations having a special charter which designated a place for the meetings of the stockholders, and which provision could not be changed by the Legislature because the charters were not subject to repeal. *Hilles v. Parrish*, 14 N. J. Eq., 380, 383; *Coe v. N. J. Mid. Ry. Co.*, 31 N. J. Eq., 105, 117. These cases held that independent of this statute the rule in New Jersey was the same as that in other states, “that a private corporation whose charter has been granted by one state cannot hold meetings and pass votes in another state.”

The expression “upon proper cause shown” means a cause, the propriety of which is made to appear to the judicial officer nominated in this section. The essence of this statute is that the propriety of the “cause shown” be committed to the determination of such judicial officer, and for such determination the conclusion reached by the applicant for the order from undisclosed facts, is not a valid substitute. *Natl. Packing Co. v. Garven*, 78 Atl. Rep., 703.

All corporations organized under the General Act, since 1875, must hold meetings of stockholders in New Jersey, at the principal and registered office of the company.

It would seem to follow from *Hilles v. Parrish*, 14 N. J. Eq., 380, that any action taken at any stockholders' meeting held outside of New Jersey is void.

Directors may meet outside of the state.

This section is the legislative sanction of New Jersey for the holding of directors' meetings outside of the state. *Hilles v. Parrish*, 14 N. J. Eq., 380; *Thompson on Corporation*, Vol. 6, Section 7875, et seq., discusses the rule in detail.

See also *Coe v. Midland Ry. Co.*, 31 N. J. Eq., 105, 117; *Parsons v. Leut*, 34 Id., 67; *Schultze v. Van Doren*, 64 Id., 465; *aff'd* 65 Id., 764.

“Every corporation shall maintain a principal office in this state, and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same, and for the transfer of stock.”

This is the legislative prohibition against “tramp corporations.” Requiring the corporation to “maintain” a principal office is but the statutory declaration of the principle that a corporation “must dwell in the place of its creation and cannot migrate to another sovereignty.” *Bank of Augusta v. Earle*, 13 Pet. (U. S.), 519, 588; *Day v. Newark India Rubber Co.*, 1 Blatchf. (U. S.), 628.

The same doctrine has been asserted by the courts of New Jersey. *Coe v. N. J. Mid. Ry. Co.*, 31 N. J. Eq., 105, 117 (1892).

The company must state in its certificate of incorporation the location by street and number of its principal office. Section 8, subdivision II, as amended in 1898. See p. 35, ante.

This same registration of the principal office must appear in every certificate, report or statement thereafter filed or published. Section 43a, ante.

The office must be accessible to the public.

Besides registering the office in the departments of New Jersey, the office must be known and accessible to the public, having a sign containing the name of the corporation displayed at the entrance to the office.

A failure to do this subjects the directors to a joint and several penalty of two hundred dollars, repeated every thirty days after service of process. Section 45.

Registered agent in charge.

This agent should be a citizen of the state of New Jersey, of full age, or a domestic corporation authorized so to act. Trust companies are given exclusive power to act as the agents of corporations, domestic and foreign, and to register and transfer stocks, and such powers are forbidden to other corporations. See p. 28, ante, P. L. 1899, p. 455.

It is clear from an examination of the statutes of New Jersey that it is intended by the state that there shall be no evasion of this provision, but that there shall be an agent actually in charge of the office during business hours.

The name of this agent must be inserted in the certificate of incorporation (Section 43a), and his name must be given in every certificate filed or published by the corporation. *Id.*

The agent must be authorized to receive process against the company. Section 43a.

This is intended for the benefit of those who desire to sue domestic corporations and to put an end to the evasion of suits in New Jersey by corporations organized under its laws.

There must be not only an authorized agent at the office, but he must be in charge of the office "at all times during business hours."

The agent is required, under Section 33, at all times during business hours to exhibit the stock books to any one entitled to see the same, and to exhibit an annual list of the stockholders made up each year and filed ten days before the annual election. This list must be open to the inspection of any stockholder during business hours. Section 33.

The agent must also be authorized to transfer stock.

Inspection of books by stockholders.

At common law the stockholder of a corporation had the right to examine at a reasonable time the books and records of the company. Where such right was denied to him he had an action for damages. He also had a remedy by mandamus, but, as was stated in the case of *Rosenfeld v. Einstein*, 46 N. J. Law, 479, 481, "To warrant this writ against private companies or their officers or agents there must be some specific duty to the relator, expressly imposed by the terms of their charters or necessarily arising from the nature of the privileges or obligations which the charters create. * * * Undoubtedly at proper times and for proper purposes, shareholders are entitled to inspect corporate books." It was held in that case, however, that where there is a fair reason to believe that a party asking for an inspection of corporate books intends to make an improper use of them, and on that ground his request is denied, the court will not aid him by mandamus.

"The right is not to be given to gratify curiosity or for speculative purposes, but only when its exercise is sought in good faith, and for a specific purpose. Such purpose must appear by the proofs on the application, or the writ will be denied. In *re Steinway*, 159 N. Y., 250; 53 N. E., 1103; 45 L. R. A., 461; *Phoenix Iron Co. v. Com.*, 113 Pa., 563; 6 Atl. Rep., 75; *Rosenfeld v. Einstein*, 46 N. J. Law, 479. The allowance of the writ is within the discretion of the court upon the facts presented in each particular case." *Bruning v. Hoboken Printing & Pub. Co.*, 67 N. J. Law, 119; *Garcin v. Trenton Rubber Mfg. Co.*, 60 Atl. Rep., 1098; *Bevier v. U. S. Wood Preserving Co.*, 69 Atl. Rep., 1008; *Huyler v. Cragin Cattle Co.*, 40 N. J. Eq., 392.

The statute gives each stockholder the express right to examine the stock and transfer books at the company's principal office at all times during business hours (Section 33), and if that right is denied to him the sole remedy is by mandamus. *Fuller v. Hollander & Co.*, 61 N. J. Eq., 648; see also *Rothermel v. North American Co.*, 18 N. J. L. J., 273; *Maeder v. Buffalo Bill's Wild West Co.*, 132 Fed. Rep., 280.

The inspection or examination of the books of a corporation cannot be restricted by a provision in the certificate of incorporation or by-laws, in language prohibiting such examination by a stockholder, except where the right is conferred by the statute or by resolution of

the directors or stockholders. The Supreme Court holds such a provision inoperative.

“The power conferred by statute to summarily order the books brought into the state is a futile power, if, after brought here, the provision in the certificate of incorporation or a by-law could nullify the order of the court for the stockholders to inspect and examine the books, and such a construction should not be given. * * *

“If there be no resolution passed by the directors or by the stockholders, then there is nothing in such a provision in conflict with the common-law right. The fair intent of such a by-law is that the directors will make some provision for inspection at proper times and places and under proper regulations. * * * The court should not construe such a provision to mean that no right to inspect shall exist where the directors or stockholders fail to take action. That is, such a by-law should not be held operative as against the right of the stockholders.” *Hodgens v. United Copper Co.*, 67 Atl. Rep., 756.

It is the settled rule in New York that a stockholder has the right for a proper purpose and at a proper time and place to inspect the corporate books, and that, if such right is denied him by the officers of the corporation, the court may in its sound discretion issue a writ of mandamus to compel an inspection; however, an inspection will not be allowed for an ulterior purpose or to embarrass the corporation, as for instance, where it appears that the inspection is desired in order to furnish information to a competing company. *Peo. ex rel. Lehman v. Cons. Fire Alarm Co.*, 142 App. Div. (N. Y.), 753; *In re Steinway*, 159 N. Y., 250; *In re Taylor*, 117 App. Div. (N. Y.), 348; *Peo. ex rel. Callanan v. Keeseville, A. C. & L. C. R. R. C.*, 106 Id., 349; *In re Kennedy*, 75 Id., 188; *In re Latimer v. Herzog Teleseme Co.*, 75 Id. 522; *In re Pierson*, 44 Id., 215.

The remedy is by mandamus and not by a bill in equity for discovery. *Trimble v. American Sugar Ref. Co.*, 61 N. J. Eq., 340.

Interrogatories under §155 of the Practice Act cannot lawfully demand inspection of corporate books of an opponent. *Wolters v. Fidelity Trust Co.*, 46 Atl. Rep., 627.

See “Mandamus,” 33 Cent. Dig., Sec. 264.

Inspection of books by directors.

A director is entitled to access to all the books of a corporation because of the duty with which he is charged. *Lawton v. Bedell*, 71 Atl. Rep., 490.

Order to bring books into the state.

The power conferred by this section summarily to order books of a corporation to be forthwith brought within this state is exercisable by a justice of the Supreme Court, or by the Court of Chancery, only when a situation exists in which the judicial authority whose action

is invoked can exercise control over the books after compliance with the order. That situation constitutes the "proper cause" contemplated by the act. Such jurisdiction of the Court of Chancery is confined to cases where the same are evidential in a cause pending in the court, and cases arising under a bill filed for relief, as well as discovery, or under a bill filed for discovery only, in aid of a prosecution or defence in litigation pending or contemplated. *Fuller v. Hollander & Co.*, 61 N. J. Eq., 648.

As to the power of a grand jury to order books brought into the state for its inspection, see *National Packing Company v. Pierre P. Garven*, 78 Atl. Rep., 703.

The law being remedial must be liberally construed, but where the law furnishes an adequate remedy by mandamus, equity will not interfere. *Stettauer v. N. Y. & Scranton Const. Co.*, 42 N. J. Eq., 46 and note.

The facts upon which the jurisdiction of the Court of Chancery depends to grant an inspection under this section, therefore, are (1) that the books are outside of the state; and (2) that a proper cause exists for ordering them to be brought into the state.

A refusal to allow a stockholders' authorized attorney to examine them was held to be a denial of the stockholders' rights. *Mitchell v. Rubber Reclaiming Company*, 24 Atl. Rep., 407.

The statutory authority to order a company to bring its books into the state does not, it seems, embrace, by implication, the authority to order it to bring all its papers and memoranda here also. *Huyler v. Cragin Cattle Co.*, 42 N. J. Eq., 139, 141.

Charter limitations upon rights of stockholders to examine books.

For the purpose of avoiding litigations by stockholders having but a small interest in the company, and more especially to prevent rival concerns from prying into the private accounts and business of the company by purchasing a few shares of stock, it is common to insert in the certificate of incorporation (pursuant to Subdiv. VII of §8) a limitation upon the power of the stockholders to examine the books and accounts of the corporation. See Forms p. 561, post.

A corporation may, by mandamus, compel a corporation to produce within the state its books for examination. *Hodgens v. United Copper Co.*, 67 Atl. Rep., 756.

Effect of entries in books as evidence.

Directors' minutes are evidence of a contract, though written up after the meeting. They need not be in the handwriting of the secretary: if entered under his direction and approved by him they are valid. *Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402.

Entries in the books of a corporation are, as a general rule, competent evidence of the proceedings of the corporation and of the acts

and votes of its officers transacted at official meetings, but are not notice to third persons of the acts or resolutions entered in the minutes. As to the third persons, the books of a corporation are private books, and such persons are not chargeable with knowledge of matters there recorded any more than a third person would be chargeable with knowledge of entries made against him in the books of a private person. *Wetherbee v. Baker*, 35 N. J. Eq., 501, 509, 510; *North River Meadow Co. v. Christ Church*, 22 N. J. Law, 424; and see *Van Hook v. Somerville Mfg. Co.*, 5 N. J. Eq., 137, 633.

The minute book of a corporation is competent evidence in suits between stockholders to show the acts of the corporation, but is not competent evidence of any agreement made by the stockholders as individuals. *Black v. Shreve*, 13 N. J. Eq., 455, 466, 483. The minutes are also admissible to show the contractual intent of the corporation and the authority of its officers to carry out the corporate action. *Fleming v. Reed*, 77 N. J. Law, 563.

The minutes are the best evidence as to the contents of a resolution and where the minutes are at hand no other evidence is competent. *Durbrow v. Hackensack Meadows Co.*, 77 N. J. Law, 89.

45. Name to be Displayed.

The name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof the directors shall be jointly and severally liable to a penalty of two hundred dollars, to be recovered with costs, by the state, before any court of competent jurisdiction, by action to be prosecuted by the attorney-general; and they shall jointly and severally be liable to a like penalty for every thirty days' additional default from and after the service of process in the first action, to be recovered in like manner.

46. Alternative Call for Meeting.

Whenever, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three or more stockholders having voting powers may call such meeting by publishing ten days' notice of the time, place and purposes of the meeting

in a newspaper published in the county in which its principal office in this state is located, and mailing such notice to all stockholders whose post-office address is known or can be ascertained; a meeting called as aforesaid shall be a legal meeting of the corporation, and if there be no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the book of minutes of the corporation.

P. L. 1846, p. 70; P. L. 1849, p. 306; Act of 1875, §51. .

IV.—Dividends—Payment of Capital Stock.

47. Unless otherwise provided in the original or amended certificate of incorporation,¹ or in a by-law² adopted by a vote of at least a majority of the stockholders, the directors of every corporation created under this act shall, in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand.

(As amended by Chap. 110, Laws of 1901; P. L. 1901, p. 246.)

P. L. 1866, p. 1034; P. L. 1891, p. 176; P. L. 1896, §47, p. 293; Act of 1875, §52.

For the provisions respecting unlawful dividends and citation of cases relative thereto, see Section 30.

This section in the Act of 1875, and as amended in the supplement of 1891 (P. L. 1891, p. 176), applied only to "manufacturing corporations within this state." This section applies to all corporations formed under this act, and is not limited to manufacturing corporations.

¹ Precedents, pp. 554, 555.

² Precedents, pp. 579, 580.

The purpose of the amendment of 1901 primarily was to do away with the effect of *Marquand v. Federal Steel Company*, 95 Fed. Rep., 725, and to enable corporations to pay dividends on common stock during the same year and for the same time that dividends are paid on preferred stock, and to provide in the charter or by-laws for the times of paying dividends.

It would seem that under this amendment the certificate of incorporation or a by-law adopted by a majority of the stockholders may empower the board of directors to do either or both of the following things:

(1) Determine the time or times for the declaration and payment of dividends;

(2) Fix the amount to be reserved as working capital or otherwise.

The revision of 1901 made a radical change by permitting a majority of the stockholders to control the declaration of dividends by means of by-laws, and thereby removing many of the difficulties encountered under the old statutory theory. *Raynolds v. Diamond Mills Paper Co.*, 69 N. J. Eq., 299.

A reserve fund accumulated by the cutting down of dividends which would have been paid to preferred stockholders is available for the payment of subsequent dividends upon the preferred stock. But a corporation has no right to accumulate a reserve fund from earnings which would otherwise be paid to holders of the common stock as dividends and afterwards use the fund to pay dividends on the preferred stock, when the net profits of the year for which the dividend is declared are not sufficient for that purpose. *Bassett v. U. S. Cast Iron Pipe & Foundry Co.*, 73 Atl. Rep., 514.

Suits to compel declaration of dividends.

“The power of the Court of Chancery to order the directors of a trading corporation to make a dividend of unused profits, when they improperly refuse to do so, is undoubted. * * * Generally suits to compel the declaration of dividends must be in the name of the corporation, but where the corporation is a defendant and the majority of directors are parties charged with fraud in this very respect, the suit will proceed to a decree upon the complainant’s rights.” *Laurel Springs Land Co. v. Fougerey*, 50 N. J. Eq., 756, 759; see also *Stevens v. U. S. Steel Corp.*, 68 N. J. Eq., 373; *Knapp v. S. Jarvis Adams Co.*, 135 Fed. Rep., 1008; *Maeder v. Buffalo Bill’s Wild West Co.*, 132 Fed. Rep., 280; *Trimble v. American Sugar Refining Co.*, 61 N. J. Eq., 340.

A suit to compel the declaration of a dividend cannot be maintained by a stockholder where it is not shown that he has not made application therefor to the directors. *Maeder v. Buffalo Bill’s Wild West Co.*, 132 Fed. Rep., 280.

When a dividend is declared it becomes a debt due from the corporation to the individual stockholder, and after demand of payment, an action at law may be maintained for its recovery. *King v. Paterson & Hudson R. Ry. Co.*, 29 N. J. Law, 504.

Directors are not personally liable to stockholders for the amount of a declared dividend until it has been set aside from the corporate assets so as to become a trust fund in their hands. *Seales v. Gebbie*, 115 App. Div. (N. Y.), 778, *aff'd* 190 N. Y., 533.

As to the right to dividends as between the life tenant and remainderman of shares of stock, see *Van Doren v. Olden*, 19 N. J. Eq., 176; *Lang v. Lang's Executor*, 57 N. J. Eq., 325.

By unanimously adopting a by-law placing the power to declare or withhold dividends in the board of directors, the stockholders may waive the right to sue. *Raynolds v. Diamond Mills Paper Co.*, 69 N. J. Eq., 299.

Approval by a majority of the stockholders does not validate the declaration of dividends out of capital and the rule that courts will not interfere with the management of the internal affairs of a corporation does not apply to such ultra vires acts. *Siegman v. Electric Vehicle Co.*, 72 N. J. Eq., 403; 140 Fed. Rep., 117.

If the directors neglect to apportion a quota of the dividends to certain shares of stock, the owner may maintain assumpsit against the company for breach of the implied contract that an equal distribution will be made. *Jackson's Adm'r v. Newark Plank Road Co.*, 31 N. J. Law, 277; *Edwards v. National Window Glass Jobbers' Ass'n*, 68 Atl. Rep., 800.

A stockholder may sue to compel payment of dividends where a majority of the directors acting fraudulently fail to declare dividends. *Lawton v. Bedell*, 71 Atl. Rep., 490.

A bill filed by a stockholder of a corporation, averring that there are accumulated profits of its business not reserved for working capital under the statute, and praying that its directors should meet and declare a dividend out of such accumulated profits, is not demurrable. *Griffing v. A. A. Griffing Iron Co.*, 48 Atl. Rep., 910.

A stockholder's bill alleged the payment of a large dividend, but that the corporation also had a large accumulation of profits which should be distributed as dividends, but it was not stated that such sum was larger than the stockholders had fixed as a reserve. Held, that the bill was not sufficient to show that such accumulated profits should be distributed among the stockholders, since it would be presumed that such sum was reserved as working capital. *Trimble v. Am. Sugar Ref. Co.*, 61 N. J. Eq., 340.

Profits are clearly to be ascertained by reference to the capital stock paid in, and not to the nominal share capital. It would be inconsistent to require by Section 47 a dividend out of profits to be ascertained with reference to capital stock paid in and to forbid by

Section 30 a dividend unless there were net profits over and above the amount of the nominal share capital. *Goodnow v. American Writing Paper Co.*, 73 N. J. Eq.; 692.

Any surplus, resulting from a reduction of capital stock, should be equitably distributed among the stockholders, enough being retained for carrying on the business to the best interests of the stockholders. *Continental Securities Co. v. Northern Securities Co.*, 66 N. J. Eq., 274.

In the absence of special agreement among the stockholders, there is a *prima facie* duty to apportion the dividend among the stockholders *pro rata* to their several holdings.

A dividend once declared becomes a trust fund for the stockholders with the directors as trustees. As to the necessity of demand on the corporation for payment of such dividend, see *Breslin v. Fries-Breslin Co.*, 70 N. J. Law, 274.

The power of reserving a fund as working capital is discretionary with stockholders, and so long as the capital reserved is retained for the benefit of the whole corporation equity will not interfere. *Lillard v. Oil, Paint & Drug Co.*, 70 N. J. Eq., 197.

See also *Blanchard v. Insurance Company*, 79 Atl. Rep., 533.

Contract to pay employee percentage of net profits as compensation.

“It is admitted that the president impliedly promised the plaintiff to pay him one-sixth of the net profits of the operations of the defendant as part of his compensation, but it is claimed that by reason of Section 47 of the Revised Corporation Act neither the president nor the corporation itself could thus dispose of the profits. But this one-sixth proposed to be given to the plaintiff was salary—payment for service—and not part of the profit, but part of the expenses of the business; and if the corporation had permitted its president, by acquiescence, or by receiving the benefit of the services for which this one-sixth was to pay, to make this arrangement, then the corporation was as much bound to pay this as to pay the fixed salary which they had agreed to. The profits referred to in Section 47 were not ascertained until this expense of conducting the business had been paid.” *Bennett v. Millville Imp. Co.*, 67 N. J. Law, 320.

48. Loans to Stockholders Prohibited.

Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act, except as hereinafter provided in case of the purchase of property, and no loan of money shall be made to a stockholder or officer thereof; and if any such loan be made the officers who

make it, or assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum so loaned.

P. L. 1846, p. 169; P. L. 1849, p. 306; Act of 1875, §54.

An agreement on the part of a corporation that a subscriber for stock shall be secured as to part of his investment by mortgage on the corporation's property is void as to creditors of the corporation. *Boney v. Williams*, 55 N. J. Eq., 691; *Reed v. Helois Carbide Specialty Co.*, 64 N. J. Eq., 231; *Hollins v. Am. Union Electric Co.*, 66 N. J. Eq., 457; *See v. Heppenheimer*, 69 N. J. Eq., 36.

New York decisions.

The statute of New York, which provides that "No loan of moneys shall be made by any stock corporation, except a moneyed corporation, or by any officer thereof out of its funds to any stockholder therein," has been construed as follows:

To create the liability for a loan to a stockholder there must have been a loan in such form as to create an indebtedness and an absolute liability for its repayment by the borrower. *Billings v. Trask*, 30 Hun., 314; 62 Hun., 71.

The officers making or assenting to any loan of its money to stockholders are personally liable for corporate debts contracted before payment of such loan. *Boynton v. Hatch*, 47 N. Y., 225.

The principal object of this provision is to prevent a reduction of capital under cover of loans to stockholders. It is for the protection of creditors. *A. C. Nellis v. Nellis*, 62 Hun., 63.

For further cases, see notes to Section 49.

49. Stock Issued for Property Purchased.

Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this

act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

Act of 1875, §55; P. L. 1889, p. 414; P. L. 1893, p. 444.

“In the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive” was inserted in the statute by the Revision of 1896.

Before the Revision of 1896 the rule was clearly stated by the Court of Errors and Appeals in *Bickley v. Schlag*, 46 N. J. Eq., 533, where it was held that in the absence of deceit or some other corrupt constituent the bargain between the parties could not be disturbed by a Court of Chancery.

For a discussion of this section, see *Yale Law Journal*, Vol. 15, p. 111, January, 1906.

These sections place the stockholder's liability to creditors upon a firmer foundation than the trust fund doctrine, the statute absolutely prohibiting agreements for the issue of stock for a consideration less than its par value, and affording relief to all creditors without distinction, whether they had notice of the fact of an issue below par or not and whether they became creditors before or after an issue of stock. And the stockholder is liable even if the creditor who is seeking to enforce the claim is also a stockholder. *Easton Nat'l Bank v. Am. Brick & Tile Co.*, 69 N. J. Eq., 326; *aff'd* 70 Id., 722; but see *s. c. Id.*, p. 732.

The provisions of the above section are restricted, respecting the acquisition of shares of stock of public utility corporations, by Section 19 of the Public Utilities Act, to which reference may be had in this volume.

The law is clearly opposed to any arrangement by which stock shall be issued without the receipt by the company of an equivalent in value to its par. Any agreement for the purpose of issuing stock below par and without the receipt of value by the company is deemed contrary to the whole policy of the law. *Easton National Bank v. American Brick Co.*, 69 N. J. Eq., 326; *aff'd* 70 Id., 722; *Donald v. American Smelting & Refining Co.*, 62 N. J. Eq., 729; *Volney v. Nixon*, 68 N. J. Eq., 605; *Carver v. Southern Iron & Steel Co.*, 78 Atl. Rep., 240.

The requirement that stock shall be fully paid for either in property or cash, cannot be evaded by the issuance of debentures for sale at 93 cents on the dollar, with the privilege of converting them into preferred stock at 70 cents on the dollar. *Carver v. Southern Iron & Steel Co.*, 78 Atl. Rep., 240.

A holder of a small amount of stock may enjoin the issuance of preferred stock below par although his interest is small and may not be affected by the proposed illegal action. *Carver v. Southern Iron & Steel Co.*, 78 Atl. Rep., 240, in which the question of what shall constitute a bona fide complainant is discussed.

When stock in a corporation has been issued as full paid and it is sought to enforce every liability of a stockholder upon the ground that the property was over-valued, there is no debt due for which attachment will lie until after the Court of Chancery has made an order determining the amount of the stockholder's liability. Unpaid subscriptions to stock are considered as assets and the existence of creditors subjects these to the rules applicable to trust funds. In cases of bonus stock or stock issued for property, he who would assert a claim against such stock on the theory that it was issued in exchange for over-valued property, must first prove fraud. *Gilson v. Appleby*, 77 Atl. Rep., 1084.

In *Donald v. American Smelting and Refining Co.*, 62 N. J. Eq., 729, the court said:

“The meaning of section 48 is not questionable; the money must equal the face value of the stock. The language of section 49 is even more explicit; the corporation may issue stock to the amount of the value of the property. The value of the property in the one case, just as the value of the money in the other, must at least equal the face value of the stock. Such was the view expressed for this court by Mr. Justice Depue in *Wetherbee v. Baker*, 35 N. J. Eq., 501, and supported by abundance of authority.

“The cases in this state to which we are referred (*Elkins v. Camden & Atlantic R. R. Co.*, 36 N. J. Eq., 241; *Park v. Grant Locomotive Works*, 40 N. J. Eq., 114; *aff'd* 45 N. J. Eq., 244; *Ellerman v. Chicago Junction Rys. Co.*, 49 N. J. Eq., 217; *Willoughby v. Chicago Junction Rys. Co.*, 50 N. J. Eq., 656; *Sewell v. East Cape May Beach Co.*, 50 N. J. Eq., 717; *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620), in support of the proposition, that the honest judgment of the managers of a corporation with respect to matters *intra vires* cannot be disturbed at the instance of stockholders, all relate to transactions for which the Legislature has set up no other criterion than the discretion of those managers. But the original issue of corporate stock is a special function, in the exercise of which the Legislature has fixed the standard to be observed, and it is the duty of the courts, so far as their jurisdiction extends, to see that this standard is not violated, either intentionally or unintentionally.

“When corporate stock has once been issued for property purchased, then the Legislature has directed the application of a different rule. In the words of the same Section 49 ‘the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under the provisions of this act; and in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive.’ Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to hold his stock as full-paid stock, free from further call. The cases of *Bickley v. Schlag*, 46 N. J. Eq., 533, and *Rural Homestead Co. v. Wildes*, 54 N. J. Eq., 668, indicate that the completed transaction was equally secure, even before the statute received its present decisive form.”

That a different rule prevails as to valuation, and proof of value, in the case of mining property, see *Geer v. Amalgamated Copper Co.*, 61 N. J. Eq., 364.

Stock issued as full-paid and not subject to further call, at an admitted overvaluation, but without fraud, cannot be held unpaid stock as between the corporation and the stockholders receiving such stock. Dividends declared from the annual net profits cannot be suppressed to make up the deficiency between the value of the assets turned in and the par value of the stock where the value of the assets when declaring such dividends is not impaired. *Goodnow v. American Writing Paper Co.*, 72 N. J. Eq., 645; *aff'd* 73 Id., 692.

Where shares were issued for property at a very excessive valuation, the transaction was held to be dishonest, and it was held that the shares were not fully paid. *Hebberd v. Southwestern Cattle Co.*, 55 N. J. Eq., 18. This case was prior to the Revision of 1896.

Under our statutes a payment in stock for property fraudulently over valued may be questioned by a receiver representing creditors, since an issue of stock under such circumstances is a violation of the letter and spirit of the Corporation Act, and is to be treated as absolutely void with respect to creditors, leaving the stockholders within the sections of the act providing a remedy for creditors against stockholders for the amounts unpaid on stock. *Johnson v. Tennessee Oil, etc., Co.*, 69 Atl. Rep., 788. See, also, s. c. 73, Id., 60.

Holders of stock issued for a patent at a gross overvaluation are liable to the receiver of the corporation for the debts and expenses of administration. *Honeyman v. Haughey*, 66 Atl. Rep., 582.

“To justify a corporation in issuing stock under our act for property purchased, there should be an approximation at least in true value of the thing purchased to the amount of the stock which it is supposed it represents.” *Edgerton v. Electric Improvement, etc., Co.*, 50 N. J. Eq., 354; decided in 1892. See also *Rural Homestead Co.*

v. Wildes, 54 N. J. Eq., 668; Meredith, et al., v. N. J. Zinc & Iron Co., 55 N. J. Eq., 211; aff'd 56 Id., 454; s. c. 59 Id., 257.

“The express prohibition of section 54” (Act of 1875), “and the whole spirit and policy of the act are so clearly opposed to any arrangement by which corporate stock shall be issued without receipt by the company of an equivalent in value to its par, that any agreement to this effect must be deemed void as contrary to the policy of the law.” Easton Nat'l Bank v. American Brick & Tile Co., 70 N. J. Eq., 732.

Property value and judgment of board of directors.

Neither “good will” nor prospective profits, however promising, can be considered as property within the meaning of this section. The term refers to something visible and tangible, necessary for business. See v. Heppenheimer, 69 N. J. Eq., 36, 43.

But in Washburn v. National Wall Paper Co., 81 Fed Rep., 17, it was held that the good-will of a business is property, and stock may be issued for it, and one who participated in and approved the method of valuation of such good-will cannot afterwards claim that the good-will so bought by the corporation was overvalued.

When stock is issued for property the question is: What is the value of the property for the purpose of a stock issue by a New Jersey corporation? Schuler v. Southern Iron & Steel Co., 75 Atl. Rep., 552.

The price brought at a sale of property in bankruptcy is not conclusive of its value. Neither is the filed appraisalment in bankruptcy proceedings conclusive proof of the value of the assets thus appraised.

An agreement to exchange property for fully paid capital stock to be issued cannot be enforced when the property is not equal in value to the nominal par value of the stock and there has been no determination of value by the directors. Ecuadorian Ass'n v. Ecuador Co., 70 N. J. Eq., 277; aff'd 71 Id., 757.

Where the rights of creditors are involved the issue of stock as paid for in work and labor is upheld only where services accepted in payment have been put in at a full, fair and bona fide valuation. Clevenger v. Moore, 71 N. J. Law, 148.

“Neither bookkeeping nor mere recitative language in resolution of a board of directors creating values can be accepted as the equivalent of the proof of bona fide value required by our statute where stock is issued for property purchased.” Knickerbocker Importation Co. v. Assessors, 74 N. J. Law, 583, at page 588.

The honest judgment of the directors, if reached without due examination into the elements of value, or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of the statutory rule as surely as would corrupt motive.” See v. Heppenheimer, supra.

See also Volney v. Nixon, 68 N. J. Eq., 605; In re Remington

Automobile & Motor Co., 139 Fed. Rep., 766; s. c. 153 Id., 345; Strickland v. National Salt Co., 72 N. J. Eq., 170; 76 Atl. Rep., 1048.

Patents.

See *Am. Mutoscope Co. v. Assessors*, 70 N. J. Law, 172.

An individual creditor cannot bring an action in his own behalf at law against a stockholder upon the ground that the property for which the stock was issued was not of the value of the stock. All such suits must be by a general creditors' bill. *Wetherbee v. Baker*, 35 N. J. Eq., 501.

The earlier cases held that the contract of the subscribers could only be fulfilled by payment in money. In later cases this doctrine has been relaxed, and stock issued and paid up in work and labor, or in the purchase of property the corporation is authorized to hold, has been held to have been legally issued. *Wetherbee v. Baker*, supra. See also *Rubino v. Pressed Steel Car Co.*, 53 Atl. Rep., 1050.

Sales to company by promoters.

For a discussion of the liability of promoters who, through controlled or interested directors, sell to a corporation (N. J.) their property, and at an undisclosed profit, see *Old Dominion Copper Co. v. Bigelow*, 188 Mass., 315. But it has been held that where the promoters are the only stockholders in the corporation to which they have sold their property at a secret profit, no one is deceived and the corporation has no cause of action. *Old Dominion Copper Co. v. Lewisohn*, 136 Fed. Rep., 915; aff'd in 148 Fed. Rep., 1020, and in 210 U. S., 206; 52 L. Ed., 1025.

One promoter may be held liable for the entire secret profit of a joint enterprise, the other being without the jurisdiction. The liability of a promoter may be determined by the law of this state or the law of the state where the transaction occurred. Courts of equity everywhere recognize the fiduciary relation which exists between a promoter and the company. *Bigelow v. Old Dominion Copper Co.*, 71 Atl. Rep., 153.

Where promoters are the sole stockholders of a corporation, the corporation cannot rescind a purchase made at their instigation. *Old Dominion Copper Co. v. Lewisohn*, 136 Fed. Rep., 915; aff'd 148 Id., 1020; supra.

See also *Groel v. United Electric Co. of N. J.*, 70 N. J. Eq., 616; *Plaquemines Tropical Fruit Co. v. Buck*, 52 N. J. Eq., 219; *Seacoast R. Co. v. Wood*, 65 N. J. Eq., 530; *Erlanger v. New Sombrero Phosphate Co.*, 3 App. Cas., 1218, 1236; s. c., 6 English Ruling Cases, 777.

Where a promoter to whom stock was issued agrees to hold part of it for a specified purpose, the corporation by issuing other stock in place of it, and recognizing the validity of the issue and subsequent transfers thereof, is estopped to deny its validity in the hands of a subsequent bona fide purchaser without notice of the equities in favor of

the corporation or the promoter. *New York & Eastern Tel. & Tel. Co. v. Great Eastern Tel. Co.*, 74 N. J. Eq., 221; *aff'd* 75 Id., 297.

False and fraudulent representations in a prospectus issued by promoters respecting the value of property which is to be transferred to the corporation when organized, afford ground for equitable relief against the corporation in behalf of one who, relying on such representations, subscribed for its stock. *Manning v. Berdan*, 135 Fed. Rep., 159.

It has been held that where a promoter has a mere option to purchase lands, a one-sided contract which could not be enforced against him, and he contracts to sell those lands to his company, he is liable for the profits made by himself, but not for profits made by his joint promoter. *Loudenslager v. Woodbury Heights Land Co.*, 58 N. J. Eq., 556.

When two persons are interested in promoting an enterprise and one furnishes the money and the other expends it for the common benefit, the latter is liable to account for his disbursements. He may not retain disbursements made because of his own negligence. *Bailey v. Burgess*, 48 N. J. Eq., 411.

When a promoter, who is instrumental in securing a consolidation of corporations by an exchange of shares, induces subscriptions on the promise that, in consideration of stock to be retained by him as a part of the plan, he will furnish subscriptions to stock for the benefit of the subscribers, that promise is a part of the consideration entering into the contract of subscription, and a default on the part of the promoter avoids the contract. *Audenried v. East Coast Milling Co.*, 68 N. J. Eq., 450.

Promoters secured an option on the capital stock of an old corporation, formed a syndicate for the purpose of transferring the shares of the old corporation to a new, and sold, at a secret profit, their options to the syndicate, which in turn became the corporation. Held, The members of the syndicate were in effect the stockholders of the new corporation and the promoters were accountable to them for the secret profit. *Arnold v. Searing*, 73 N. J. Eq., 262.

A company organized under agreements to purchase the property of other companies succeeds to the right to enforce the agreement against the promoters and the vendors and promoters, who by collusion and fraud secured secret profits, are liable to account to the company, and all parties may be joined. *Shutts v. United Box, Board & Paper Co.*, 67 N. J. Eq., 225.

And a receiver may bring an action in behalf of the corporation against promoters who have secured secret profits. *Voorhees v. Mallott*, 69 Atl. Rep., 643.

When conveyance of stock for property has been held void, and the corporation has become insolvent, the receiver may, within the discretion of the court, file a bill to determine the rights of such

stockholders. *McMaster v. Drew*, 70 N. J. Eq., 6; *Id.* 68 Atl. Rep., 771.

Such a bill need not disclose whether the assets are sufficient to satisfy creditors.

Fraud being the basis for any relief under this section, he who would attack such a transaction must comply with the rules of equity pleading and alleged in the premises of his bill every material fact necessary to establish his right to relief. *Schuler v. Southern Iron & Steel Co.*, 75 Atl. Rep., 552.

When stock is fraudulently issued for property purchased in excess of the value of the property, it may be doubted whether the remedy is to compel the surrender and cancellation of the stock, thereby reducing the capital stock of the corporation. *Stephany v. Marsden*, 75 Atl. Rep., 899.

Such contracts will not be enforced between the parties themselves. *Cummings v. Syundt*, 120 Fed. Rep., 84.

Joint tort feasons.

Promoters who sell their property to a corporation, through interested directors, at a secret profit, are joint tort feasons and their liability is both joint and several. In such a case there is no right of contribution. *Bigelow v. Old Dominion Copper, etc., Co.*, 71 Atl. Rep., 153.

Secret profits and limitation of actions against promoters.

“The principle running through all the authorities upon this branch of the law rests not upon the imposition of a penalty for the concealment, but upon the single ground that one in a fiduciary capacity will not be permitted to retain a profit inequitably obtained.” *Loudenslager v. Woodbury Heights Land Co.*, 58 N. J. Eq., 556, 559.

The general rule is that the parties are liable for the inequitable profits made at the corporation's expense, and no statute of limitation will begin to run until the discovery of the fact. Indeed, it has been judicially determined that such parties are substantially trustees of an expressed trust, and that to the equities arising between them the statute of limitations is not applicable as a bar. *Williams v. McKay*, 40 N. J. Eq., 189, at p. 199.

49a.* Corporations May Not Plead Usury.

No corporation shall hereafter plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obliga-

* Arbitrary number; section inserted here merely for convenience of reference.

tion executed by said corporation; provided, that this act shall not apply to any such action which is now pending.

For the statute allowing conversion of preferred stock into bonds and of bonds into common stock, see Section 18a.

("An act relating to usury," approved April 3, 1902; P. L. 1902, p. 459.)

This act is for the protection of holders of corporate bonds and obligations originally issued at less than par, and makes such securities unimpeachable so far as the question of usury is concerned. At common law, such bonds, in the absence of fraud in their issue, were valid, but were open to the defence of usury, where usury statutes were in force. Indirectly, therefore, the act enables corporations to issue securities, when market conditions require, at less than the face value.

A statute for the same purpose has been in force in New Jersey with respect to railway companies since 1855. Gen. Stat., p. 3703.

A similar statute, applicable to all corporations, foreign and domestic, has existed in New York since 1850 (Chap. 172), and other states have like statutory provisions.

See, as to the effect of the New York act, *Stevens v. Watson*, 4 Abb. App. Dec., 302; *Butterworth v. O'Brien*, 23 N. Y., 275; *Rosa v. Butterfield*, 33 N. Y., 665; *Bank v. Hoge*, 35 N. Y., 65; *Bank v. Commercial Warehouse Co.*, 49 N. Y., 635; *Stewart v. Bramhall*, 74 N. Y., 85; *Hawley v. Kountze*, 6 App. Div., 217.

A practical way of avoiding usury act before the passage of the act of 1902 is indicated by the decisions in *Franklin Trust Co. v. Rutherford B. S. & C. Electric Co.*, 57 N. J. Eq., 42; *aff'd* 58 N. J. Eq., 584, and *Lane v. Watson*, 51 N. J. Law, 186; *aff'd* 52 N. J. Law, 550.

50. Certain Corporations May Take Stock and Bonds in Other Corporations in Payment for Labor and Materials.

Corporations having for their object the building, constructing or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporations formed for the purpose of con-

structing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such instalments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

P. L. 1891, p. 329.

Although express power is given only to certain designated corporations to issue stock in payment of work, labor and services, it would seem from the case of *Wetherbee v. Baker*, 35 N. J. Eq., 501, 512, that where the contract for the rendition of services has been made in good faith and stock issued thereon, such stock is legally issued.

The effect of this section is essentially the same as that of section 49; the judgment of the directors is conclusive in the absence of actual fraud. But the value of the services or labor performed must equal the value of the stock issued therefor. *McCarter v. Pitman*, *Glassboro & Clayton Gas Co.*, 69 Atl. Rep., 211.

While a court of equity will not intervene at the instance of the state to prevent an usurpation of corporate authority by a private corporation, a quasi-public corporation, intrusted by the state with public powers for the public good, must perform its duties with due regard to its trust, and equity will not permit an ultra vires act on the part of such a corporation. The state is a proper party to enjoin the threatened act. *Ibid.*

As to the power of a railroad company to issue its entire stock to a construction company for the building of the road, see *In re Delaware River & Atlantic Ry. Co.*, 76 N. J. Law, 163.

The requisites of an information under this section are discussed in *McCarter v. Pitman, etc., Gas Co.*, *supra*.

51. Any Corporation May Hold Stock and Bonds of Other Corporations.

Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

P. L. 1888, p. 385; P. L. 1888, p. 445; P. L. 1891, p. 329; P. L. 1893, p. 301.

Under the General Corporation Law of 1875, corporations had no express power to purchase or hold stock of other corporations or to vote thereon. Neither was there any implied power to make such purchases. *Elkins v. Camden & Atlantic R. R. Co.*, 36 N. J. Eq., 5, 233; 37 Id., 273.

Section 10 of the Revision of 1875 expressed the numerous purposes for which corporations might be formed and at the end added the general clause, "or any lawful business or purpose whatever." But under this general clause there was doubt as to the right of a company to purchase and hold stock in other corporations. *Willoughby v. Chicago Junction Ry. Co.*, 50 N. J. Eq., 656.

In 1889, by an amendment to section 55 of the Revision of 1875 (section 49, *ante*), the directors of any company organized under that act were authorized to purchase "the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for their business," and to issue stock in payment therefor.

In 1893 the act was again amended and corporations were authorized to purchase and hold stock of other companies and to exercise all the powers incidental to ownership. P. L. 1893, p. 301.

This section was included in the Revision of 1896, as Section 51. Legislature has thus expressly conferred the power and it is beyond the jurisdiction of the courts to question the exercise of the

power. *Dittman v. Distilling Co. of America*, 64 N. J. Eq., 537; *Trenton Potteries Co. v. Oliphant*, 58 N. J. Eq., 507.

The power of a corporation under common law to acquire and hold the stock of other corporations as property was doubtful. Under the old scheme of special charters and narrow statutes such an act was generally held to be ultra vires, unless the stock was taken honestly for the protection of capital of the corporation or for a debt. As soon as the corporation act was amended to permit the organization of corporations for "any lawful business whatever," it seems clear that a corporation could be created for the express purpose of acquiring stock in other companies. If the word "lawful" is construed in the sense of "authorized," such power is apparently granted in Section 6 of the General Corporation Act. But because of the conflict of authorities on the question, Section 51 was passed as a declaratory statute and not for the purpose of affecting the charters in existence at the time or extending the objects and powers of corporations organized under special charters or under the corporation act itself. Sections 2 and 51 merely swept away any doubts as to the power of corporations to hold stock. *Robotham v. Prudential Ins. Co.*, 64 N. J. Eq., 673, 697.

The power to purchase stock and bonds of other corporations is to be exercised subject to the limitation of section 2 (ante, p. 7). The power exists as a primary power only when the purpose to exercise it as such is expressed in the certificate of incorporation. It exists as an incidental power only so far as necessary for the attainment of the objects of incorporation. A railroad company incorporated under P. L. 1903, p. 645, for the purpose of constructing, maintaining and operating a line of railway, with definite termini, is without power to hold the stock and bonds of a street railway company operating beyond these termini, and thereby to control the operations of the street railway. *State v. Atlantic City & Shore Ry. Co.*, 77 N. J. Law, 465.

Where a monopoly arises from the lawful exercise of the powers conferred by this section, the right to question such monopoly belongs to the state alone in quo warranto proceedings brought to oust the corporation. *Dittman v. Distilling Co.*, 64 N. J. Eq., 537.

It would seem that the case of *Coler v. Tacoma Ry. Co.*, 65 N. J. Eq., 347, limits the power of New Jersey companies to hold stock of corporations of other states to the stock in companies organized in states whose laws authorize their own domestic corporations to hold stock in other companies, and to exercise all the powers incident to ownership. P. L. 1893, p. 301.

As to the power of a corporation to guarantee securities of another corporation when disposed of in payment of debt, see *Ellerman v. Chicago Junction Rys., etc., Co.*, 49 N. J. Eq., 217 (1891).

A corporation may vote shares in another corporation in which it is a stockholder by a proxy duly authorized. *State v. Rohlfss*, 19 Atl. Rep., 1099.

A declaration alleging that a corporation is the holder of shares of stock issued in the name of its treasurer sufficiently alleges that such corporation is a stockholder of the defendant corporation. *Edwards v. Nat'l Window Glass Jobbers' Ass'n*, 68 Atl. Rep., 800.

The rule followed by the federal courts is stated in *Vandagriff v. Rich Hill Bank*, 163 Fed. Rep., 823.

Holding companies.

The fact that the directors in two companies may be appointed by a holding company does not necessarily subject the two companies to a common control. An injunction will not issue to prevent the constituent companies from entering into a contract on the sole ground that a minority of the directors of one of the companies, owns stock in the holding company. Such a contract must appear to be inequitable and unfair to justify the interference of a court. *Pierce v. Old Dominion Copper Co.*, 67 N. J. Eq., 399; 72 Id., 595; *aff'd* 70 Atl. Rep., 1101.

52. Penalty for false certificates.

If any certificate made, or any public notice given by the officers of any corporation, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.

P. L. 1846, p. 70; P. L. 1849, p. 307; Act of 1875, §56.

The Revision of 1896 makes a knowledge of the falsity of the certificate or notice of prerequisite to a recovery under this section and provides that the liability created is a penalty enforceable in the courts of this State only. Such knowledge was not necessary under either the Act of 1846 or the Revision of 1875.

This personal liability may be enforced by any creditor whose contract arose while such officers were stockholders or officers of the company, by an action at law, and it is not necessary to proceed by general creditors' bill, as under Section 21. *Wetherbee v. Baker*, 35 N. J. Eq., 501. Sections 93 and 94 apply, and no sale can be had under the execution against the officer or director, until after judgment has been obtained against the corporation and execution thereon returned unsatis-

fed. The case of *Quimby v. Waters*, 27 N. J. Law, 296, 28 Id., 533, is a precedent for such an action.

This section relates to "officers," and does not include incorporators who signed the certificate of organization. *Thompson-Houston Elec. Co. v. Murray*, 60 N. J. Law, 20.

New York decisions.

Under the New York statute which corresponds in most respects with the foregoing section, the cases have held as follows:

Untruthful representations which would have no effect upon the judgment of persons dealing with the corporation could not be held material. *Walton v. Godwin*, 33 St. Repr., 889; Id., 58 Hun., 87.

The burden rests upon the plaintiff of establishing that the certificate filed was in point of fact false. *Ferguson v. Gill*, 74 Hun., 566.

V.—Winding Up.*

53. Corporate existence continues.

All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

P. L. 1846, p. 72; P. L. 1849, p. 308; Act of 1875, §59.

The provisions of this section apply to all suits whether in contract or in tort and whether suit is begun before or after dissolution. *Hould v. Squire & Co.*, 79 Atl. Rep., 282.

In a suit by stockholders of a dissolved corporation against the directors for mismanagement of its affairs, the corporation should be made a party, by virtue of this section. Creditors should likewise be made parties. *Camp. v. Taylor*, 19 Atl. Rep., 968.

On the expiration of the charter of a corporation, the corporate

* A company whose charter has been proclaimed by the Governor to be void for non-payment of taxes is within the provisions of §§53-60 as to winding up. *American Surety Co. v. Great White Spirit Co.*, 58 N. J. Eq., 526.

existence is continued by this section for the purposes therein mentioned. *Grey v. Newark Plank Road Co.*, 65 N. J. Law, 603.

See *Atlas R. R. Supply Co. v. Lake & River R. R. Co.*, 134 Fed. Rep., 503; *Metropolitan Rubber Co. v. Place*, 147 Fed. Rep., 90.

A company whose charter has been proclaimed by the Governor to be void for non-payment of taxes is within the provisions of §§53-60 as to winding up. *American Surety Co. v. Great White Spirit Co.*, 58 N. J. Eq., 526. Such a corporation may be adjudicated a bankrupt. *In re Munger Vehicle Tire Co.*, 159 Fed. Rep., 901.

Chapter 24, Laws 94 (P. L. 1904, p. 44), relating to building and loan associations, does not provide a substitute method of winding up the affairs of an insolvent corporation. *Fitzgerald v. State Mutual Building & Loan Ass'n*, 69 Atl. Rep., 564. For a review of authorities, see *Michigan Law Review*, Vol. 7, p. 53.

A sale of all the corporate property and all of the franchises except the franchise of being a corporation, amounts to a dissolution of the corporation and the procedure prescribed by Section 31 must be followed. *Coler v. Tacoma Ry. & Power Co.*, 65 N. J. Eq., 347.

As to the effect of dissolution on outstanding stock and the rights of a stockholder, see *Bijur v. Standard Distilling, etc., Co.*, 70 Atl. Rep., 934.

Effect on contracts.

In this state the courts have not adopted the doctrine that the mere dissolution of the contracting company dissolves its continuing contracts, and under our law the claim for damages for breach of the contract is chargeable to the assets. *Bijur v. Standard Distilling and Distributing Co.*, 70 Atl. Rep., 934; *Spader v. Mural Dec. Co.*, 47 N. J. Eq., 18; *Bolles v. Crescent Drug Co.*, 53 N. J. Eq., 614; *Rosenbaum v. Credit System Co.*, 65 N. J. Law, 255.

54. Directors; trustees on dissolution.

Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them. They shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any

part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequent thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this act relative to the winding up of the affairs of such corporation and to the distribution of its assets.

Act of 1875, §57. As amended P. L. 1910, p. 51.

As to the duty of the court to remove trustees and appoint a receiver in their place under certain conditions, see *Fitzgerald v. State Mutual Building & Loan Ass'n*, 69 Atl. Rep., 564.

This section seems to give directors power to sell at private sale. *Freeman v. Sea View Hotel Co.*, 57 N. J. Eq., 68.

Where the directors on dissolution of a corporation divide the assets—more than sufficient to reimburse the complainant—among its stockholders, without providing for a debt due by the corporation, they are personally chargeable with such debt, and under §§54 and 55 the creditor may maintain a bill in chancery against the directors as trustees for discovery and relief. *Keen v. Maple Shade Land & Improvement Co.*, 63 N. J. Eq., 321.

Directors may not use their positions of trust to obtain for their own debts an inordinate share of the assets. *Tennant v. Appleby*, 41 Atl. Rep., 110; *Headley v. Ocean City Imp. Ass'n*, 10 Atl. Rep., 471.

Directors as trustees for the general creditors cannot prefer one above another, or so dispose of the property as to create preferences in their own favor. *Richards v. Haliday*, 92 Fed. Rep., 798.

55. Powers and liabilities of such trustees.

The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the afore-

said debts and property, by the name of the corporation, and shall be sueable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

Act of 1875, §58; P. L. 1892, p. 35; P. L. 1894, p. 136; P. L. 1895, p. 609.

Quaere.—Whether, after the formal dissolution of a corporation by proclamation for failure to pay state franchise tax, its directors as trustees have power to vote stock of other corporations owned by it. *In re Delaware River & A. R. Co.*, 76 N. J. Law, 163.

56. Court of Chancery may continue directors as trustees or appoint receivers of dissolved corporation.

When any corporation shall be dissolved in any manner whatever, the court of chancery, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes.

P. L. 1846, p. 73; P. L. 1849, p. 308; Act of 1875, §60.

The authority of the Chancellor to interpose and take from the

directors the power to close up the business of the corporation, and place its affairs in charge of a receiver, is a discretionary power, to be exercised only on good cause shown—upon circumstances disclosed by the proof which show the need of the interference of the court for the protection of creditors or stockholders from breaches of trust by the directors in the performance of their duties. *Newfoundland R. R. Construction Co. v. Schack*, 40 N. J. Eq., 222, 229; *Rawnsley v. Trenton Mut. Life Ins. Co.*, 9 N. J. Eq., 95, 347.

A corporation which has defaulted in the payment of state taxes and whose charter has been declared void by proclamation of the Governor is within the provisions for winding up corporations contained in Sections 53-60 of the Corporation Act, and the Chancellor in his discretion may continue directors as trustees to settle the corporate affairs or may appoint a receiver for that purpose. Discretion to appoint a receiver should not be disclaimed because of failure of proof of breaches of trust by the directors since the Governor's proclamation, but should be exercised upon proof of such breaches of trust or of previous breaches of trust or misconduct or incapacity evincing the unfitness of directors to properly discharge the duties of such trust. *American Surety Co. v. Great White Spirit Co.*, 58 N. J. Eq., 526.

See *Silvestro v. E. Side Co-op. Bldg. & Loan Ass'n*, 53 Atl. Rep., 823.

57. Jurisdiction of Court of Chancery.

The court of chancery shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require.

P. L. 1846, p. 73; P. L. 1849, p. 309; Act of 1875, §61.

58. Disposition of proceeds by trustees or receivers.

The said trustees or receivers shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the court; and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

P. L. 1846, p. 73; P. L. 1849, p. 309; Act of 1875, §62.

See *Edwards v. Nat'l Window Glass Jobbers' Ass'n*, 58 Atl. Rep., 527; s. c. 68 Id., 800.

On final distribution of assets, a payment of shares to the shareholders of record is a valid payment as against a holder of the certificate by assignment who has not applied for a transfer on the books. *Campbell v. Perth Amboy, etc., Loan Ass'n*, 76 N. J. Eq., 347.

59. Actions not to abate on dissolution.

Any action, now pending or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation.

P. L. 1852, p. 140; Act of 1875, §§65, 92.

60. Copy of decree of dissolution to be filed in office of secretary of state.

A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual volume of laws.

VI.—Execution Against Corporation.

61. On execution schedule of property to be furnished to officer.

Every agent or person having charge or control of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it, so far as he may have knowledge of the same.

P. L. 1846, p. 71; P. L. 1849, p. 307; Act of 1875, §66.

62. Execution may be satisfied by debts due the corporation.

If any officer, holding an execution, shall be unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution, in whole or in part, by any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last preceding section, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.

P. L. 1846, pp. 71-72; P. L. 1849, pp. 307, 308; Act of 1875, §§67-68.

Where a corporation had no bank account, and the treasurer deposited the amounts which he received for the company in his own account in the bank, in his individual name, and not as an officer of the company, held, that this was a debt due the corporation within the meaning of this section, and was not cash in bank belonging to the corporation and going to the receiver on his appointment. So far as a corporation and its receiver are concerned, the debts are bound for the application of the execution creditor's debt by the service upon the corporation of the notice of election. *Van Steenberg v. Parsell Pearl Button Co.*, 19 N. J. L. J., 151.

VII.—Insolvency.**63. Directors must call meeting of stockholders when corporation becomes insolvent.**

Whenever any corporation shall become insolvent, the directors, within ten days thereafter, shall call a meeting of the stockholders, and lay before them for inspection and examination all the books of accounts, by-laws and minutes of the corporation, and exhibit a full and true statement of all its estate, funds and property, and of all the debts due and owing to it, and by whom, and of all the debts owing by it, and to whom, as far as the directors can at that time make out the same; so as to exhibit to the stockholders a full, fair and true account of the situation of the affairs of the corporation.

P. L. 1829, p. 58; Act of 1875, §69.

This and the following sections are in substance a re-enactment of the "Act to Prevent Frauds by Incorporated Companies." (P. L. 1829, p. 58.) Under that Act it was held that the only criterion of insolvency furnished by the Act was the suspension of business, and that the act of insolvency contemplated by the statute is committed at the time the company suspends its ordinary business operations. *Bedford v. Newark Machine Co.*, 16 N. J. Eq., 117.

Insolvency defined. *Bank v. Sprague*, 21 N. J. Eq., 538; *Miller v. Gourley*, 65 N. J. Eq., 237.

64. Conveyance or assignment of property, etc., after insolvency, or contemplation of insolvency, void as against creditors.

Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign or transfer any of its estate, effects, choses in action, goods, chattels, rights or credits, lands or

tenements; nor shall they or either of them make any such sale, conveyance, assignment or transfer in contemplation of insolvency, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors; provided, that a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached.

P. L. 1829, p. 58; P. L. 1895, p. 166.

This section was enacted in 1829, and continued in force to 1875, but was omitted from the Revision of that year. It was again enacted in the Revision of 1896.

While such provision was not in force (in 1886) *Wilkinson v. Bauerle*, 41 N. J. Eq., 635, was decided in the Court of Errors and Appeals, which held that a corporation might sell and transfer its property and prefer one or more of its creditors to others, although it was insolvent. Several other cases to the same point followed.

Montgomery v. Phillips, 53 N. J. Eq., 203, held that the board of directors of an insolvent corporation could not by a mortgage upon the corporate property prefer one of its own members, distinguishing *Wilkinson v. Bauerle*, supra. See also *Mallory v. Kirkpatrick*, 54 N. J. Eq., 50; *Richard v. Haliday*, 92 Fed. Rep., 798; *Porch v. Agnew Co.*, 70 N. J. Eq., 328, 341; aff'd 71 Id., 305.

In *Streit v. Citizens' Fire Insurance Co.*, 29 N. J. Eq., 21, it was held that mere impairment of capital, even though to the extent of more than one-fourth, is not prima facie evidence of the condition of insolvency.

The directors of a corporation are not trustees for creditors in transacting the ordinary business of the company but only become such when dealing with the property of an insolvent company. The duty to the creditors springs into existence when the corporation becomes insolvent, and this duty may arise before actual steps, either voluntary or involuntary, are taken to wind up the corporate business. *Bird v. Magowan*, 43 Atl. Rep., 278.

The object of this provision is to prevent companies, actually insolvent, or whose embarrassments are such as must inevitably lead to insolvency from making a preference in favor of any one or more of its creditors. *Holcomb's Exr's v. New Hope Del. Br. Co.*, 9 N. J. Eq., 457; and see *Van Wagenen v. Savings Bank*, 10 N. J. Eq., 13; *State Bank v. Receiver*, 3 N. J. Eq., 266; *Receivers v. Paterson Gas Co.*,

23 N. J. Law, 291; *Kinsela v. Cataract Bank*, 18 N. J. Eq., 158; *Vail v. Jameson*, Id., p. 648; *Frost v. Barnert*, 56 N. J. Eq., 290, 292.

Its object is not, therefore, to prevent officers of a company from disposing of its property where they act in good faith, for the purpose of avoiding insolvency. Such dealings do not constitute fraud. If a mortgage be thus made it is valid as to the property conveyed in good faith. *Miller v. Gourley*, 65 N. J. Eq., 237.

The statute applies to the financial situation of the company at the time the challenged transfer of the property is actually made. *Wells v. Rahway White Rubber Co.*, 19 N. J. Eq., 402.

It also applies to assignments for the benefit of creditors. *American Ice Machine Co. v. Paterson, etc., Machine Co.*, 22 N. J. Eq., 72.

Cases since the Revision of 1896.

A mortgage, executed pending a suit to wind up the corporation as an insolvent debtor, is void, as being an unlawful attempt to prefer certain creditors. *Bissell v. Besson*, 47 N. J. Eq., 580.

For a statement of facts on which it was held that a corporation was insolvent within the meaning of this section at the time it executed certain bonds and a mortgage securing the same, see *Skirm, et al., v. Eastern Rubber Mfg. Co.*, 57 N. J. Eq., 179; *Holmes v. Sheridan*, 56 Atl. Rep., 308; *aff'd* 65 N. J. Eq., 765.

A mortgage executed by the president without the knowledge of the directors and ratified by resolution of such directors after the corporation had become insolvent and suspended business and the mortgagee had notice of such insolvency and suspension, is invalid as against the receiver. *Bennett v. Keen*, 59 N. J. Eq., 634.

Directors of a corporation are liable to creditors for negligence occurring while the company is insolvent. *Bird v. Magowan*, 43 Atl. Rep., 278.

A corporation in a failing condition cannot place part of its assets in the hands of a trustee to protect any of its directors as sureties on its bonds. *Taylor v. Gray*, 59 N. J. Eq., 621.

A corporation may make a general assignment for the benefit of creditors. P. L. 1899, p. 146, §24.

The lack of sufficient cash in hand to meet matured obligations does not demonstrate that the assets of a going concern would not have been worth more than its debts; consequently, such a corporation is not necessarily insolvent. *Richards v. Haliday*, 92 Fed. Rep., 798.

This section does not apply to conveyances made in good faith where a consideration moves to the company. A company does not become insolvent at a given instant. There is therefore no "fraud by an incorporated company" when the officers, acting in good faith, attempt to prevent threatened failure. *Reed v. Helois Carbide Co.*, 64 N. J. Eq., 231.

It does not refer to transactions where cash is actually given by

the mortgagees at the time of the execution of the mortgage. Such a mortgage may therefore be sustained in part. *Id.* *Savage v. Miller*, 56 N. J. Eq., 432.

Where a company was in a failing condition and two of the directors took over the stock and goods of the company and paid the claims of certain pressing creditors, the transaction, even if done in good faith, is within the terms of this section and the receiver may recover the amounts from the directors. To the extent of the debts paid, however, the directors are subrogated to the rights of the creditors. *Mills v. Hendershot*, 70 N. J. Eq., 258.

Stockholders are liable to the receiver for dividends paid out of the capital within six years from time of filing of bill, and officers are liable to refund excessive salaries. *Id.*

Independent of Section 64 directors of an insolvent corporation are trustees of the funds for creditors. Directors who are creditors cannot, therefore, take advantage of their positions to prefer their claims. *Schmidt v. Perkins*, 74 N. J. Law, 785.

Since it is well settled that the title to tangible personal property is determined by the law of its situs, it follows that a sale of the property, within this state, of an insolvent foreign corporation to directors and creditors in satisfaction of an antecedent debt is void. *Schmidt v. Perkins*, *supra*.

The intention of the parties to the transaction must be considered. *Bergen v. Rogers*, 67 Atl. Rep., 290; *aff'd* 70 *Id.*, 1100.

Where a bona fide loan is made without notice of the condition of the company, the section does not apply. "Contemplation of Insolvency" defined. *Regina Music Box Co. v. Otto & Sons*, 65 N. J. Eq., 582; *aff'd* 68 *Id.*, 801.

Insolvency, under this section, denotes a general inability to meet pecuniary liabilities as they mature, by means of either available assets or honest use of credit. *Empire State Trust Co. v. Trustees of Fisher & Co.*, 67 N. J. Eq., 602.

Insolvency is further defined in *Reinhardt v. Inter-State Telephone Co.*, 71 N. J. Eq., 70; *Ft. Wayne Electric Co. v. Franklin Electric Light Co.*, 57 N. J. Eq., 7; *aff'd* 58 *Id.*, 543.

A mortgage given to secure an antecedent debt is not given "for value" within the meaning of clause e, section 70 of the Federal Bankrupt Act, or for "a valuable consideration" within the meaning of this section. *Id.*

A mortgage given in good faith on the expectation that it would enable the company to continue business is held in *Barrett v. Perth Amboy Shipbuilding, etc., Co.*, 67 Atl. Rep., 757, to be a mortgage given in expectation of insolvency and void under this section.

An assignment of book accounts to satisfy a pre-existing debt to a creditor who has notice, is within the prohibition of this section whether

the suspension was voluntary or involuntary. *Russell and Erwin Mfg. Co. v. Faitoute Hardware Co.*, 62 Atl. Rep., 421.

When a president and a treasurer paid to themselves claims due from the company within ten days of insolvency, they may be charged with knowledge of the conditions and required to refund. *Miller, Receiver v. Audenried*, 67 N. J. Eq., 252; distinguished, *Jessup v. Thompson*, 68 N. J. Eq., 443.

Where the treasurer executed a bill of sale the statute was violated. *Richardson v. Gerli*, 54 Atl. Rep., 438.

The holder of unpaid coupons of bonds secured by a mortgage is a creditor for the purpose of instituting insolvency proceedings. *Reinhardt v. Telephone Co.*, 71 N. J. Eq., 70.

It is not necessary that the stock should stand in the name of the owner to give him standing in court under this section. *Reinhardt v. Inter-State Tel. Co.*, 71 N. J. Eq., 70; *O'Connor v. International Silver Co.*, 68 N. J. Eq., 67; *aff'd* 68 Id., 680.

Sections 64 and 86 do not extend so far as to authorize equity, at the suit of a receiver, to set aside a judgment in favor of the wife of an officer, when such judgment was secured by the activity of the officer and the purposeless inaction of the other officers. *Shinn v. Kummerle*, 72 N. J. Eq., 828.

Any agreement which comes within this section being invalid, the receiver may enforce the liability without reference to the terms of the agreement between the parties. *Mills v. Hendershot*, 70 N. J. Eq., 258.

He may have an accounting for money wrongfully realized under a void chattel mortgage. *Pryor v. Gray*, 70 N. J. Eq., 413; *aff'd* 72 Id., 436.

As to the jurisdiction of the U. S. Courts in suits brought under these sections, see *Land Title & Trust Co. v. Asphalt Co. of America*, 127 Fed. Rep., 1.

65. Remedy in chancery by injunction and appointment of a receiver in case of insolvency.

Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the al-

legations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

P. L. 1829, p. 59-60; P. L. 1852, p. 397; Act of 1875, §§70, 71, 83; P. L. 1877, p. 74.

Sections 65 and 66 remain practically the same as in "An Act to prevent fraud by incorporated companies," passed in 1829. They transfer to creditors and stockholders rights to proceed against a corporation, which were formerly secured by means of quo warranto proceedings instituted by the state. The purpose is not to give one creditor relief, but to protect the rights of all creditors and stockholders and the public; to provide a method of depriving a corporation of its franchises and of distributing its assets by one action instead of the old double procedure, first in law and then in equity. The primary object being to prevent fraud and the action being a proceeding in rem instituted by one or more stockholders or creditors in behalf of all, it follows that after a decree has passed disabling the corporation, the power of the particular stockholder or creditor who instituted the proceedings is gone. The result is that our present practice treats the summary hearing upon an order to show cause as a final hearing for a determination of all the issues in the case, and the decree thereupon as a final decree.

The power to dissolve and wind up an insolvent corporation is statutory.

"This statute empowers the Chancellor, on the application of a creditor or stockholder, alleging that the corporation in which he is

interested has become insolvent, to proceed in a summary way to inquire into the truth of such allegation, and if, upon such inquiry, it shall be made to appear that the corporation has become insolvent, and shall not be about to resume its business in a short time, with safety to the public and advantage to the stockholders, he may enjoin it from the further exercise of its franchises, and also from the further transaction of business; and he may also, at the same time, or at any subsequent time during the continuance of the injunction, if, in his judgment, the circumstances of the case and the ends of justice require, appoint a receiver to dispose of its assets and distribute the proceeds.

* * * The statute makes insolvency the jurisdictional fact. The court can do nothing—neither issue an injunction nor appoint a receiver—until insolvency is first established. * * * The proof in support of a jurisdictional fact must always be clear and convincing, for the court derives its power from the fact, and hence, until the fact is shown to exist, it has no power. To doubt in such a case is to deny. * * * ‘If it be a balancing question,’ and the conduct of those who have the management of the affairs of the corporation appears to have been upright and just, the court must resolve its doubt against the application and refuse to interfere—nor is it the duty of the court to use its power in all cases where insolvency is shown. Something more is required. The prerequisites prescribed by the statute are, that it shall be made to appear that the corporation has become insolvent, and also, that it will not be able to resume its business in a short time with safety to the public and advantage to the stockholders. The power is only to be used when the ends of justice require its exercise. The court should strive in such cases to foster and preserve rather than to strangle or destroy.” Vice-Chancellor Van Fleet in *Atlantic Trust Co. v. Consolidated Electric Storage Co.*, 49 N. J. Eq., 402, 404, 406; see also *Oakley v. Paterson Bank*, 2 N. J. Eq., 173, 176; *Parsons v. Monroe Mfg. Co.*, 4 N. J. Eq., 187, 206; *Brundred v. Paterson Mach. Co.*, 4 N. J. Eq., 294, 305; *Goodheart v. Raritan Mining Co.*, 8 N. J. Eq., 73, 77; *Laurel Springs Land Co. v. Fougeray*, 50 N. J. Eq., 756; *Rawnsley v. Trenton Mut. L. Ins. Co.*, 9 N. J. Eq., 347; *Streit v. Citizens’ Fire Ins. Co.*, 29 N. J. Eq., 21; *Nichols v. Perry Patent Arm Co.*, 11 N. J. Eq., 126; *Jacobs v. Mexican Sugar Co.*, 130 Fed. Rep., 589.

The proceeding under this section and a suit with the ordinary motion for an injunction against the corporation and its directors, brought under the general equity jurisdiction of the court, are entirely different in their nature and cannot be joined in the same bill.

Although in some instances and for particular reasons another defendant has been joined in an action against an insolvent corporation, *American Ice Machine Co. v. Paterson Steam Co.*, 22 N. J. Eq., 72; *Goodheart v. Raritan Mining Co.*, 8 N. J. Eq., 73, there is no case in which a court has entertained in one bill an action in the nature

of a quo warranto and an action based upon the general equitable jurisdiction of the court against the same corporation and numerous other defendants. *Pierce v. Old Dominion Copper Co.*, 67 N. J. Eq., 399; 72 Id., 595; aff'd 70 Atl. Rep., 1101.

Appointment of receiver; where applied for.

The court of chancery is a court of state-wide jurisdiction and all of its orders and decrees are operative throughout the entire state. An application for an injunction or other order can be made to the chancellor or to any one of the vice-chancellors; but the practice has obtained of making all such applications to members of the court who sit in the locality within which the suit arises and before whom the member of the particular local bar generally practices. Thus, for instance, a manufacturing company having its place of business and registered office in Newark becomes insolvent and a member of the bar either of Newark or Jersey City being retained to file a bill against the company for injunction and receiver, he would make the application to one of the two vice-chancellors who habitually sit in Newark, but if both were out of town and neither could be found and the matter was one of urgency, the application could be made to and would be entertained by a vice-chancellor sitting in Jersey City or elsewhere. If a lawyer residing in Trenton should file a bill against a Newark corporation, as well he might and as often happens, he would feel constrained to make the application to a Newark vice-chancellor, and if he made the application before the vice-chancellor in Trenton he would probably be directed to take the bill before a Newark member of the court unless he could give a good reason for presenting it outside of the locality where the suit arose, that is, where the defendant resided; and if the Trenton vice-chancellor should take jurisdiction and make an order to show cause why a receiver should not be appointed he would undoubtedly make it returnable at Newark on one of the court's regular motion days there. Whenever any member of the court takes jurisdiction in any such matter, the court's action is never questioned, and cannot be questioned. While the state is not divided into equity districts the members of the court of chancery are distributed all over the state, that is to say, they reside in different sections of the state and hold the court in the localities in which they live. The chancellor and two vice-chancellors live at Morristown; one vice-chancellor in Paterson; one in Jersey City; one in Newark; another at Trenton and still another at Camden. Lawyers living in the rural counties adjacent to any one of these places are at liberty to make applications to the vice-chancellor most accessible to them, and their applications are always entertained. Chancery Chambers are maintained in Trenton, Newark, Jersey City, Camden and Atlantic City, where trials are held. The members of the court may be applied to either at those chambers or at their residences.

A receiver should not be appointed in case of insolvency where the directors are closing the affairs of the corporation and it appears that they are in all respects trustworthy. *City Pottery Co. v. Yates*, 37 N. J. Eq., 543. See *Reinhardt v. Interstate Telephone Co.*, 71 N. J. Eq., 70.

A receiver will not be appointed at the instance of a stockholder on a bill filed against a director of the company to take charge of moneys alleged to have been improperly received by the director, where no apprehension of loss is alleged in the bill and the answer shows that the money was loaned to the director by the board of directors. *Hager v. Stevens*, 6 N. J. Eq., 374.

The continuance in control of directors or officers, directly or indirectly, against whom is made out a prima facie case of malfeasance in office is repugnant to the well-settled judicial policy of this state. *Fitzgerald v. State Mutual Building & Loan Ass'n*, 69 Atl. Rep., 564. For further cases, see *Michigan Law Review*, Vol. 7, p. 53.

The fact that one creditor of an insolvent corporation not able to resume its business with safety to the public or advantage to its stockholders, institutes proceedings to have the corporation adjudged insolvent and a receiver appointed with ulterior purposes of self-advantage, will not defeat the proceedings. *Ft. Wayne Electric Corporation v. Franklin Electric Light Co.*, 57 N. J. Eq., 7, 16; aff'd 58 Id., 543, 579.

The requirement of the statute that before a receiver can be appointed, proof shall be made that an insolvent corporation will not be able to "resume" its business with safety to the public and advantage to its stockholders within a short time, does not predicate a complete suspension but an inability to take up again and perform such functions or duties as shall have been suspended because of the insolvency, such as the payment of its current obligations. *Ibid.*

An application for the appointment of a receiver of a corporation will not be defeated on the ground that the misfortunes of the corporation are due to the wrongful conduct of the applicant; such an application not being for the individual benefit of the applicant. *McMullin v. McArthur Electric Mfg. Co.*, 68 Atl. Rep., 97.

Where the evidence justifies the belief that the creditors will be paid and the business of the corporation resumed if a receiver is not appointed, a receiver will not be appointed. The court must ascertain whether insolvency exists and whether a receivership is necessary for the safety of the public and advantage of the stockholders. *Ibid.*

A corporation may make a general assignment for benefit of creditors (P. L. 1899, p. 146, Sec. 24), but this same section further provides that if such corporation become insolvent a receiver shall be appointed by the Court of Chancery. Insolvent corporations are therefore still subject to the jurisdiction of the Court of Chancery. *Gilroy v. Somerville Woolen Mills*, 67 N. J. Eq., 479.

The facts and circumstances must be set out in the bill from which

the insolvency of the company shall appear. *Newfoundland R. R. Construction Co. v. Schack*, 40 N. J. Eq., 222, 226.

It is sufficient to authorize the appointment of a receiver if it appears that a company cannot continue in business. *Wood & Nathan Co. v. American Mach. & Mfg. Co.*, 62 Atl. Rep., 768.

A receiver will not be appointed on preliminary hearing where all the grounds which would authorize such an appointment are denied by proper affidavits. *Taylor v. Cuban Land & Steamship Co.*, 106 Fed. Rep., 437; *Brady v. Bay State Gas Co.*, Id., 584.

In judging of the solvency or insolvency of a company, its property should be estimated at its fair value, and not at the depreciated price which it might command at a forced sale. The most unfavorable inference as to the condition of a corporation may justly be drawn from the circumstance of the company's withholding its books upon an investigation touching its insolvency. *Parsons v. Monroe Mfg. Co.*, 4 N. J. Eq., 187.

In *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620, an unsuccessful attempt was made to have a receiver appointed, not "because the corporation is now actually insolvent, but because of a fear, resting entirely on conjecture, that it will become so at some time in the future." Dissensions had arisen among the members of the board of directors as to the business policy of the company.

A complete suspension of the business of a corporation is not necessary; the fact that it is seriously embarrassed and losing money being sufficient to permit an injunction and the appointment of a receiver. That creditors may have instituted an action for the appointment of a receiver, with the ulterior purpose of securing control of the affairs of the corporation, will not defeat the action. *Catlin v. Vichachi Mining Co.*, 67 Atl. Rep., 194; *Cook v. East Trenton Pottery Co.*, 53 N. J. Eq., 29.

The owner of a "voting trust" certificate is a stockholder within the meaning of this section. *O'Grady v. U. S. Ind. Tel. Co.*, 71 Atl. Rep., 1040.

Bondholders being the beneficial owners of a decree of foreclosure obtained against the corporation by the trustee, are creditors of the corporation within this section. *Ibid.*

A person connected with the management will not be appointed receiver. *Middlesex Freeholders v. State Bank*, 29 N. J. Eq., 268; *aff'd* 30 Id., 311.

See also *Conklin v. U. S. Shipbuilding Co.*, 140 Fed. Rep., 219 (Circuit Court).

This section is not superseded by the national bankruptcy act. *Brown v. Allebach*, 156 Fed. Rep., 697. The effect of the Federal Bankrupt Act upon insolvency proceedings under state law is discussed in *Singer v. National Bedstead Mfg. Co.*, 65 N. J. Eq., 290.

As to the jurisdiction of the United States Courts to appoint a receiver, see *Hollins v. Brierfield Coal and Iron Co.*, 150 U. S., 371.

This section creates a right which may be enforced by a suit in a federal court and such court will follow its own procedure in granting relief. *Land Title & Trust Co. v. Asphalt Co. of America*, 127 Fed. Rep., 1.

Nature of proceeding.

The nature of the proceeding under these sections and the practice is discussed in *Albert v. Clarendon Land, etc., Co.*, 53 N. J. Eq., 623, 625; *Cape May v. Cape May, etc., R. R. Co.*, 59 Id., 59; *Gallagher v. Asphalt Co.*, 65 N. J. Eq., 258, and 67 N. J. Eq., 441; *Pierce v. Old Dominion Copper Co.*, 67 N. J. Eq., 399; s. c. 72 N. J. Eq., 595; aff'd 70 Atl. Rep., 1101.

The limitations upon the use of affidavits and particularly under rule 122 on the argument of motions for an injunction are not applicable to the summary method provided in these sections. If either party is dissatisfied with the decrees in this summary proceeding, his remedy is by appeal to the Court of Errors and Appeals. *Pierce v. Old Dominion Copper Co.*, supra.

To entitle a stockholder to action under this section he must be the actual owner of stock. *Hoopes v. Basic Co.*, 69 N. J. Eq., 679; aff'd 72 Id., 426; *Iserman v. International Stoker Co.*, 72 N. J. Eq., 708.

The final decree is the decree for an injunction, which virtually destroys the corporation like a judgment of ouster in quo warranto proceedings. The order appointing a receiver may be embodied in the final decree or may be made subsequently. *Pierce v. Old Dominion Copper Co.*, supra.

Effect of appointment of receiver.

The appointment of a receiver does not work a dissolution of the corporation. Corporate liabilities, rights and duties remain and the corporate affairs are managed by the receiver. *Kirkpatrick v. Assessors*, 57 N. J. Law, 53; *N. J. Southern R. R. Co. v. R. R. Commissioners*, 41 N. J. Law, 235. As to creditors, *Graham Button Co. v. Spielman*, 50 N. J. Eq., 120; aff'd p. 796.

A corporation which has been declared insolvent has power to take steps looking toward a reorganization and a resumption of its property and business pending an injunction and receivership, and may employ agents to aid in the carrying out of such purposes, for whose compensation it will be liable if the injunction is dissolved and the receiver removed. *Linn v. Joseph Dixon Crucible Co.*, 59 N. J. Law, 28.

A corporation in the hands of a receiver can legally hold an election for directors, and the court may order such election. *Lehigh Coal & Navigation Co. v. Central R. R. Co. of N. J.*, 5 N. J. L. J., 214.

See *Nicholson v. Wheeling, etc., R. R. Co.*, 110 Fed. Rep., 105; *Fleming v. Fleming Hotel Co.*, 69 N. J. Eq., 715.

Receivers' certificates.

As to the purposes for which receivers' certificates may be issued and their priority over other liens, see *Lockport Felt Co. v. United Box Board & Paper Co.*, 70 Atl. Rep., 980.

Petition to vacate appointment.

After a receiver was appointed the defendant filed a petition setting up new facts and praying that the appointment of a receiver be vacated; held, that it was not necessary to file a bill in the nature of a bill of review to obtain the relief asked for in the petition. A bill of review is necessary only after final decree. *Franklin Electric Light Co. v. Fort Wayne Electric Corporation*, 58 N. J. Eq., 543.

Conflict of laws.

A New York corporation, in contemplation of insolvency, gave a mortgage on lands located in New Jersey to citizens of New Jersey. The general laws of New York forbade a mortgage by a company in contemplation of insolvency. Held, that although the company brought with it to New Jersey its charter powers, it did not bring the general laws of the State of New York; that it had power in its charter and under New Jersey laws to mortgage its property, and that the general laws of New York had no effect to restrain its action. *Boehme v. Rall*, 51 N. J. Eq., 541.

Powers of receiver.

The receiver must take charge of all the property and so manage and preserve it as to enable it to be disposed of most advantageously. In the case of ordinary corporations the duty can be fully performed by merely storing, insuring and otherwise guarding the property and preserving its value until a sale can be judicially made. Ordinarily there is no necessity or advantage in continuing the business and an early conversion of the assets into money, and its distribution among creditors is the plan of wisdom. *Vanderbilt v. Central R. R. Co.*, 43 N. J. Eq., 669.

The receiver is the representative of creditors, but he is also the representative of the corporation and the stockholders. He may therefore sue the directors who have diverted the assets of a company to themselves or to a company of which they are the sole stockholders. *Landis v. Hotel Co.*, 53 N. J. Eq., 654, distinguished. *Hayes v. Pier-son*, 65 N. J. Eq., 353.

There are two classes of insolvent corporations: (1) those of public character; (2) mere private enterprises. In the former class the franchise is kept alive by the receiver and sold. In the latter class no duty devolves upon the receiver to care for the franchise. He will

pay the franchise tax only so long as he uses the franchise. He cannot sell the franchise. In *re Mather's Sons' Company*, 52 N. J. Eq., 607.

On principles of comity the receiver of a foreign corporation may seek the aid of the courts of this state to preserve the property here against the fraudulent acts of the officers. *Bidlock v. Mason*, 26 N. J. Eq., 230.

A receiver has power to adjust by agreements rights of claimants under the mechanics' lien law, although the claims have been merely filed. *Demott v. Stockton Paper Mfg. Co.*, 32 N. J. Eq., 124.

The receiver represents both the corporation and its creditors and is intrusted with the rights and powers of both. *Runyon v. Farmers & Mech. Bank*, 4 N. J. Eq., 480; *National Trust Co. v. Miller*, 33 N. J. Eq., 155, 158; *Receiver v. Spielmann*, 50 N. J. Eq., 120; *aff'd Id.*, 796; *Hopper v. Lovejoy*, 47 N. J. Eq., 573; *Hood v. McNaughton*, 54 N. J. Law, 425; *Barkalow v. Totten*, 53 N. J. Eq., 573; *Falk v. Whitman Cigar Co.*, 55 N. J. Eq., 396; *Bennett v. Keen*, 59 N. J. Eq., 634; *Vanderbilt v. Central R. R. Co.*, 43 N. J. Eq., 669; *Una v. Newark Savings Inst.*, 46 Atl. Rep., 660; *Hendrickson v. Dwyer*, 70 N. J. Law, 223; *Cunningham v. Alryan Woolen Mills*, 69 N. J. Eq., 710; *Lockport Felt Co. v. United Box Board & Paper Co.*, 70 Atl. Rep., 980; *Mills v. Hendershot*, 70 N. J. Eq., 258.

Creditor defined.

The word "creditor" as used in the statute is applied in a broad sense. If a party can come in as a claimant and prove that he is entitled to a share in what is to be divided, it is generally true that he is a creditor. *Gallagher v. Asphalt Co.*, 65 N. J. Eq., 258; *Rosenbaum v. U. S. Credit System Co.*, 61 N. J. Law, 543; *Fort Wayne Electric Co. v. Franklin Electric Light Co.*, 57 N. J. Eq., 16; *Spader v. Mural Decorating Mfg. Co.*, 47 N. J. Eq., 18; *Bolles v. Crescent Drug Co.*, 53 N. J. Eq., 615; *New Jersey Ins. Co. v. Meeker*, 37 N. J. Law, 282.

Receiver of solvent corporation; when appointed.

The court, in *Sternberg v. Wolff*, 56 N. J. Eq., 389, held, that when, by reason of dissensions among the directors of a trading corporation, there is a deadlock in the management of its business by them, a receiver pendente lite may be appointed. See also *Archer v. American Water Works*, 50 N. J. Eq., 33; *Fougeray v. Cord*, 50 N. J. Eq., 185, 756; *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq., 620, 625, 626.

When *Sternberg v. Wolff* came back to the Court of Chancery, notwithstanding the opinion of the Court of Appeals, it refused to appoint a receiver, holding that the Court of Chancery ought not to interfere with the business of a solvent corporation by the appointment of a receiver unless there is a present danger to the interests of the stockholders, consisting of a serious suspension or

interference with the conduct of the business, and a threatened depreciation of the value of assets consequent thereon, which may be met and remedied by a receiver. In other words, it must appear that the appointment of a receiver would serve some beneficial purpose to the stockholders. *Sternberg v. Wolff*, 56 N. J. Eq., 555. See also *Hayes v. Pierson*, 65 N. J. Eq., 353.

Where it appears that the corporation is not insolvent and that a receiver was appointed at the instance of less than one-quarter of the stock, the receiver will be discharged. *Stokes v. Knickerbocker Investment Co.*, 70 N. J. Eq., 518.

Receivers of foreign corporations.

The court may take jurisdiction in every case where it is made to appear that the corporation has done business here, and still has property here, although at the time when the bill or petition was filed its business here is entirely suspended. *Albert v. Clarendon Land, etc., Co.*, 53 N. J. Eq., 623, 626.

The Court of Chancery will not appoint a receiver for a foreign corporation on a mere suspicion that it is about to remove its property to another state, or intends to commit a fraud, when it is not shown to have been declared insolvent by the courts of the state of its creation. *Smyth v. Empire Rubber Co.*, 2 N. J. L. J., 154.

Whether, after a foreign corporation doing business in this state has passed into the hands of a receiver in the state of its domicile, a receiver will be appointed in this state, and, if so, whether the domiciliary receiver will be appointed here, will depend upon the volume and kind of business done in this state, and whether any special interest of the creditors or citizens in this state is likely to be involved in the settlement of the insolvent's affairs. The receiver in this state is amenable alone to the direction of this court, and not to the direction of the domiciliary receiver. *Irwin v. Granite State Provident Ass'n*, 56 N. J. Eq., 244.

Preliminary injunction; solvent corporation.

The rule as to the granting of a preliminary injunction is discussed in *Harriman v. Northern Securities Co.*, 132 Fed. Rep., 464.

66. Court may appoint receivers; powers of receivers.

The court of chancery, at the time of ordering said injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, with full power and authority to demand, sue for, collect, receive and

take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor, and the receiver or receivers or trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the Court of Chancery; the word receiver as used in this act shall be construed to include receivers and trustees appointed as provided in this act.

P. L. 1829, pp. 60, 61, 62; Act of 1875, §§72, 77.

Where directors and officers, pending an application for a receiver on the ground of insolvency alleged to have been caused by their wrongdoing, passed a resolution recommending the dissolution and liquidation of a building and loan association and indirectly procured the appointment by the shareholders of three certain trustees in liquidation, it was the duty of the court, insolvency being shown, forthwith to remove the trustees and appoint a receiver, who neither by his official participation in the affairs of the

insolvent company nor by personal affiliation with the individual directors would be embarrassed in the due administration of his office. *Fitzgerald v. State Mutual Building & Loan Ass'n*, 69 Atl. Rep., 564. See *Michigan Law Review*, Vol. 7, p. 53.

An officer of a corporation, under whose management it became insolvent, is not a proper person to be appointed receiver. The Court of Chancery may remove a receiver for cause. When an officer of a corporation has been appointed its receiver, and it appears proper that his conduct as such officer should be investigated to ascertain whether he has not obtained an advantage which he ought not to be permitted to retain, sufficient cause for removal exists. *McCullough v. Merchants' Loan & Trust Co.*, 29 N. J. Eq., 217.

All that ought to have been done by the corporation itself, the court can, in the exercise of a sound discretion, require to be done through the instrumentality of its receivers.

The court will not direct a receiver to bring suit to ascertain and enforce the liability of promoters, officers and directors of the corporation for the benefit of creditors until its visible assets have been liquidated and the fact and amount of deficiency has been ascertained. *Land Title & Trust Co. v. Asphalt Co. of America*, 121 Fed. Rep., 587; *Id.*, 127 Fed. Rep., 1.

Receivers have a discretion in the management of the trust property subject to the control of the court. *Knott v. Receivers of Morris Canal*, 4 N. J. Eq., 423.

A receiver who transfers the property after the allowance of a claim and before the claim is paid, is liable personally to the creditor. *Lockport Felt Co. v. United Box Board & Paper Co.*, 79 Atl. Rep., 544.

A receiver will not be appointed where it appears that the corporation is being dissolved by the stockholders under Section 31 and in accordance with the provisions thereof, there being no allegations of the insolvency of the corporation or mal-administration on the part of its directors. *Hegeman v. Atlantic Rubber Shoe Co.*, 75 Atl. Rep., 819.

Purchase under a judgment and execution by officers will not prevent equity from examining into the action in behalf of a foreign receiver, where it is evident that the suit and judgment constituted a mere device for protecting the officers in the possession of the property as against the receiver, creditors and stockholders. *Bidlock v. Mason*, 26 N. J. Eq., 230.

It is not an abuse of the receiver's discretion to refuse to adjourn a sale at the request of counsel representing ninety-seven per cent. of the creditors and all of the stockholders where it appears that a corporation was hopelessly insolvent and had no chance of resuming business. *Fleming v. Fleming Hotel Co.*, 70 N. J. Eq., 509.

See *Hayes v. Pierson*, 65 N. J. Eq., 353; *Honeyman v. Haughey*, 66 Atl. Rep., 582; *Strauss v. Casey Machine & Supply Co.*, 66 Atl. Rep., 958.

Appointment by Federal court.

See *U. S. Shipbuilding Co. v. Conklin*, 126 Fed. Rep., 132 (Circuit Court of Appeals).

Foreign receiver.

This state recognizes the right of a receiver appointed in a foreign jurisdiction to sue to recover property passing under his control. *Hurd v. City of Elizabeth*, 41 N. J. Law, 1.

A receiver appointed in a foreign jurisdiction may maintain an action in this state, provided it does not infringe the rights of creditors here. *Edwards v. National Window Glass Jobbers' Ass'n*, 68 Atl. Rep., 800.

In what courts receiver must bring suit.

The receiver acquires no power to sue in equity merely because he is an officer appointed by and amenable to the directions of the Court of Chancery. He must collect legal claims through the legal tribunals and enforce equitable rights of the insolvent company through courts of equity. *Riley v. Clarendon Oil & Refining Co.*, 20 N. J. L. J., 246.

Objections to receivers' report.

See *Strauss v. Casey Machine & Supply Co.*, 69 N. J. Eq., 19; see also *Id.*, 66 Atl. Rep., 958.

Claims against receiver.

As to presentation and adjudication of claims, see *Colonial Trust Co. v. Pacific Packing & Nav. Co.*, 158 Fed. Rep., 277.

67. Receiver to qualify and take oath.

Every receiver shall before acting enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following oath or affirmation: "I, _____, do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver, for the creditors and stockholders of the _____, and that without favor or affection," which oath or

affirmation shall be filed in the office of the clerk in chancery within ten days after the taking thereof.

P. L. 1829, p. 61; Act of 1875, §73.

68. Property, franchises, etc., of insolvent corporation vests in receiver upon appointment.

All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

P. L. 1828, p. 61.

This section was intended to settle the question as to whether the property of an insolvent company vests in the receiver. *Willink v. Morris Canal & Banking Co.*, 4 N. J. Eq., 377, held that it did not; that the title to the property is not changed by the appointment, and that a power only is delegated to the receivers to take charge of it and sell it. *Corrigan v. Trenton Del. Falls Co.*, 7 N. J. Eq., 489, 496, held that the statute, and the appointment of receivers under it, are a conveyance or transfer of all the property of the insolvent company to the receivers for the benefit of the creditors of the company, to be distributed in the mode pointed out by the statute. To the same effect, *Freeholders of Middlesex v. State Bank*, 29 N. J. Eq., 268, 274; *aff'd*, 30 Id., 311, and *Minchin v. Second Nat'l Bank*, 36 N. J. Eq., 436, 442. In *Receiver v. First Nat'l Bank*, 34 N. J. Eq., 450, 456, the contrary view is expressed by Vice Chancellor Van Fleet, who states that the decision of Chancellor Halsted was made in ignorance of the prior decision in *Willink v. Morris Canal & Banking Co.*, *supra*. And to the same effect is *Kirkpatrick v. Corning*, 37 N. J. Eq., 54, 59.

The question seems settled by this and the succeeding section.

But the title of an insolvent corporation to its property continues until there is either an adjudication of insolvency or the appointment of a receiver or trustee. *Squire v. Princeton Lighting Co.*, 72 N. J. Eq., 883.

Under this section assessment calls may properly be made by the receiver rather than by the court itself. He should give thirty days' notice as required by Section 22. *Falk v. Whitman Cigar Co.*, 55 N. J. Eq., 396; *Meley v. Whitaker*, 61 N. J. Law, 602; see also *Thompson on Corporations*, Sections 2003, 2004.

In relation to calls upon stockholders for unpaid subscriptions the receiver succeeds to the rights of the company.

Where the receiver has no assets for the prosecution of a disputed claim and the stockholders have not asserted the validity of the claim and indemnified him against the expense of a suit, he cannot be required to bring suit before making an assessment on the stockholders. *The Cumberland Lumber Co. v. Clinton Hill Lumber Co.*, 64 N. J. Eq., 517.

Buildings of a corporation, mortgaged to trustees for bondholders, were burned while company was in hands of receivers. Trustees received insurance and, under an order of court, transferred the money to receivers. Under sanction of court the receivers transferred the assets of the corporation to a new company and paid over the insurance. Held, the new company was not required to pay over unexpended money to trustees or to apply the money toward rebuilding. *Dallett v. Staten Island Clay Co.*, 61 N. J. Eq., 39.

A receiver of an insolvent corporation may enjoin the prosecution of a pending action commenced against the corporation by a creditor thereof, prior to the commencement of the insolvency proceedings in view of the statute vesting all the corporation's assets in the receiver. *Morton v. Stone Harbor Imp. Co.*, 44 Atl. Rep., 875.

A debtor of an insolvent corporation cannot set off notes not yet due against a claim of the corporation, at least in the absence of some equitable ground. *McManus-Kelly Co. v. Pope Mfg. Co.*, 70 Atl. Rep., 297.

The right of a receiver to property which the corporation holds on conditional sale is discussed in *Tilford v. Atlantic Match Co.*, 134 Fed. Rep., 924.

A petition for an order on receivers to turn over property is merely an application for incidental relief and does not go to the substantial issues. *Kirkpatrick v. Eastern Milling and Export Co.*, 135 Fed. Rep., 146; *aff'd* 137 Id., 387.

Debts of creditors are fastened upon the property of a corporation when it has been declared insolvent. *Graham Button Co. v. Spielman*, 50 N. J. Eq., 120; *aff'd* Id., 796.

Lien of execution.

If the personal property of a corporation has become bound by the delivery of a writ of execution to the sheriff, or if the judgment creditor elects to satisfy his execution out of debts under Section 62 of the Corporation Act, before the commencement of insolvency proceedings, the rights thus created will not be disturbed. *Van Steenburg v. Parsell Pearl Button Co.*, 19 N. J. L. J., 149. See also *Van Waggoner v. Moses*, 26 N. J. Law, 570; *Squire v. Princeton Lighting Co.*, 72 N. J. Eq., 883.

69. When debts paid or provided for, Court may direct receiver to reconvey property, or may dissolve corporation.

Whenever a receiver shall have been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contributions sufficient capital to enable it to resume its business, the court of chancery may, in its discretion, a proper case being shown, direct the receiver to reconvey to the corporation all its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed; and in every case in which the court of chancery shall not direct such reconveyance, said court may, in its discretion, make a decree dissolving the corporation and declaring its charter forfeited and void.

In *Conklin v. U. S. Shipbuilding Co.*, 140 Fed. Rep., 219, Circuit Court, it was held that this section does not create a right enforceable in a Federal court of equity, the dissolution of a corporation created by a state being a matter for determination by the tribunal to which the state has committed it.

It is doubtful whether the words "provided for," as used in this section, are answered by an extension of time of payment. *Fleming v. Fleming Hotel Co.*, 70 N. J. Eq., 509.

70. Upon reorganization company may issue bonds and stock to creditors.

Whenever a majority in interest of the stockholders of such corporation shall have agreed upon a plan for the reorganization of the corporation and a resumption by it of the management and control of its property and business, such corporation may, with the consent of the court of chancery, upon the reconveyance to it of its property and franchises, mortgage the

same for such amount as may be necessary for the purposes of such reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

P. L. 1882, p. 167.

71. Power of receiver to examine witnesses, etc.

Such receiver shall have power to send for persons and papers and to examine any persons, including the creditors and claimants, and the president, directors and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills and choses in action, real and personal estate and effects of every kind, and also respecting its debts, obligations, contracts and liabilities, and the claims against it; and if any person shall refuse to be sworn or affirmed, or to make answers to such questions as shall be put to him, or refuse to declare the whole truth touching the subject-matter of the said examination, the court of chancery may, on report by the receiver, commit such person to prison, there to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him.

Act of 1875, §74.

Service of a summons by a receiver under this section, when made without the state, does not give the courts of this state authority to declare a person, failing to appear in response thereto, in contempt. *Fidelity & Casualty Co. v. MacAfee Co.*, 72 N. J. Eq., 279.

72. Power to search, etc.

Such receiver, with the assistance of a peace officer, may break open, in the daytime, the houses, shops, warehouses, doors, trunks, chests, or other places of the corporation where any of its goods, chattels, choses in action, notes, bills, moneys, books, papers or other writings or effects, have been usually kept, or shall be, and take possession of the same, and of the lands and tenements belonging to the corporation.

Act of 1875, §75.

73. Acts of majority of receivers or trustees valid; receivers may be removed and others appointed.

Every matter and thing by this act required to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority of them; and the Court of Chancery may remove any receiver or trustee, and appoint another or others in his place or fill any vacancy which may occur.

P. L. 1829, p. 63; Act of 1875, §79.

74. Inventory and report.

Such receiver, as soon as convenient, shall lay before the court of chancery a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of his proceedings every six months thereafter during the continuance of the trust.

P. L. 1829, p. 62; Act of 1875, §76.

75. Court may limit time to present and make proof of claims.

The court of chancery may limit the time within which creditors shall present and make proof to such receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do within the time limited from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time.

P. L. 1896, p. 301.

The court had no power, except by implication, previous to the corporation revision taking effect July 4, 1896, to make any order absolutely barring creditors.

In *Grinnell v. Merchants' Ins. Co.*, 16 N. J. Eq., 283, it was held (1) that a creditor of an insolvent corporation, who shows a reasonable excuse for not presenting his claim within the time limited by the order of the court, will be admitted at any time before actual distribution, or even after partial payments, if there be a surplus in the hands of the receiver so as not to interfere with payments already made, and (2) that a creditor does not by such presentment, obtain a vested right to a certain dividend to the exclusion of others.

Where a claim was not presented within the time limited by the court, and application having been made to allow the presentation of the claim before distribution was made of the assets in the receiver's hands, and it having been made to appear that no embarrassment in the administration of the trust which the receiver could not and should not have provided against, in view of their knowledge and of the intention to urge the claim, had occurred, the claimant was allowed to present the claim beyond the time limited. *Wall v. Young*, 54 N. J. Eq., 24.

A creditor who shows a reasonable excuse for not presenting his claim within the time limited by the order will be admitted at any time before actual distribution. *Grinnell v. Insurance Co.*, 16 N. J. Eq., 283.

See *Pattberg v. Pattberg & Bros.*, 55 N. J. Eq., 604; *Conklin v. U. S. Shipbuilding Co.*, 136 Fed. Rep., 1006 (Circuit Court).

76. Claims to be upon oath.

Every claim against an insolvent corporation shall be presented to the receiver in writing and upon oath; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver shall direct, and shall produce such books and papers relating to the claim as shall be required; and the receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

P. L. 1829, p. 62.

The appointment of a receiver for a corporation and an injunction against its contracting, collecting or assigning debts are held not to excuse it for the subsequent breach of a contract of agency for a period of five years, made two years prior to the appointment of the receiver. *Rosenbaum v. U. S. Credit System Co.*, 61 N. J. Law, 543.

B made a contract with a corporation to serve it for a term of years for a fixed salary. Before the expiration of the term the corporation became insolvent and a receiver was appointed, thereby occasioning a breach of contract on the part of the corporation. Held, that B was entitled to present a claim to the receiver for the amount of damages he suffered by the breach. *Spader v. Mural Decoration Company*, 47 N. J. Eq., 18.

Proof of claim for a tort may be made to the receiver and the tort claimant may share as a creditor even if the tort claim is not reduced to judgment until after the declaration of insolvency. *Lehigh & Wilkesbarre Coal Co. v. Stevens & Condit Transp. Co.*, 63 N. J. Eq., 107. Explained in *Hoopes v. Basic Co.*, 69 N. J. Eq., 683.

See also *Hoskins v. Seaside Ice Mfg. Co.*, 68 N. J. Eq., 476.

A creditor must duly file a sworn proof of his claim, in itself satisfactory. If he fails to do so he cannot hold the receiver for any dividend which has been paid to another creditor on satisfactory proof. A receiver cannot be charged with knowledge extrinsic to the sworn proofs. *Meding v. Todd*, 56 N. J. Eq., 820.

Claims for money advanced substantially as payments for stock and not as loans are properly disallowed by the receiver. *Hollins v. American Union Electric Co.*, 66 N. J. Eq., 457.

77. Trial by jury allowed at the circuit.

Any creditor or claimant who shall lay his claim before such receiver may, at the same time, demand that a jury shall decide thereon, and in like manner the receiver may demand that the same shall be referred to a jury; and in either case such demand shall be entered on the minutes of the receiver, and thereupon an issue shall be made up between the parties, under the direction of one of the justices of the supreme court, and a jury impanelled, as in other cases, to try the same in the circuit court of the county in which the corporation carried on its business or had its principal office; the verdict of the jury shall be subject to the control of the supreme court, as in suits originally instituted therein, and when rendered, if not set aside by the court, shall be certified by the clerk of the supreme court to the receiver; the creditor shall be considered, in all respects, as having proved his debt or claim for the amount so ascertained to be due, and in all cases in which no trial by jury shall be demanded the court of chancery shall have jurisdiction to pass upon the claims presented and to determine the rights of the claimants, and to make such order or decree touching the same as shall be equitable and just.

P. L. 1829, p. 62; Act of 1875, §78.

78. Persons aggrieved by proceedings may appeal to court of chancery.

Every such insolvent corporation, or any person aggrieved by the proceedings or determination of such receiver in the discharge of his duty, may appeal to the court of chancery, which court shall, in a summary way, hear and determine the matter complained of,

and make such order touching the same as shall be equitable and just.

P. L. 1829, p. 63; Act of 1875, §82.

“The language of the seventieth section of this act [which Section 78 of the Revision of 1896 practically restates] is very comprehensive, and would seem to have been adopted for the purpose of embracing every question which could possibly be brought before the receivers for their action, and by which action any person could complain of being aggrieved.” *Jackson v. People’s Bank*, 9 N. J. Eq., 205.

This provision of the Corporation Act is not technical. Relief may be given under an original bill or by way of cross-bill, or in any proceeding by which jurisdiction may be secured. If after the receiver’s determination a new element comes into the controversy, it is not necessary to present the same to the receiver before appealing to the court for adjudication. *Taylor v. Gray*, 59 N. J. Eq., 621.

Leo v. Green, 52 N. J. Eq., 1, held that a delay for eight years in appealing from a receiver’s disallowance of a claim, where repeated notices had been given of an order limiting appeals, was a bar to any relief.

Where there is the same receiver for two corporations, one of which, as part of its assets, owns stock in the other, a creditor of the one may appeal from an allowance of a claim against the other. *Blake v. Domestic Mfg. Co.*, 64 N. J. Eq., 480.

Estoppel.

See *Lembeck v. Jarvis Terminal Cold Storage Co.*, 69 N. J. Eq., 450; *aff’d* 70 Id., 757; 69 Id., 781.

79. Upon application receiver to be substituted as plaintiff in suits pending at time of appointment.

Such receiver shall, upon application by him, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was pending at the time of his appointment.

P. L. 1828, p. 63; Act of 1875, §81.

80. Actions not to abate by death of receiver.

No action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation in case no new receiver be appointed.

81. Court may order receiver to sell incumbered property in litigation free of liens.

Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct.

P. L. 1866, p. 296; Act of 1875, §84.

This is a supplement to a statute against frauds, is remedial in its nature, and should receive a liberal construction. The object of the Legislature was the prevention of loss by the depreciation in value of the property, pending protracted litigation. The mischief and the remedy proposed are plainly apparent upon the face of the act. It was not intended to confine the remedy to mischief arising from litigation of any particular character, but to all litigations between incumbrancers respecting the validity, extent or priority of their liens. The act must be so construed as to suppress the mischief and advance the remedy. *Randolph v. Larned*, 27 N. J. Eq., 557, 560.

Before confirming a sale under this section the court will consider the equities of the holders of a superior lien which will be discharged by such sale, and if the bids received are too low, with relation to the true market value of the property, confirmation will

not be made. *Porch v. Agnew Company*, 66 N. J. Eq., 232; *aff'd* 67 Id., 727.

This section is not in violation of the constitutional provision, forbidding the passage of a law impairing the obligation of contracts. *Potts v. N. J. Ams. & Ordinance Co.*, 17 N. J. Eq., 395; *aff'd* in 17 N. J. Eq., 516.

A sale will not be set aside for an increased bid at the time of confirmation where there is delay in making the application and when the parties have taken possession and commenced operations on an extensive scale. *Rogers v. Rogers Locomotive Co.*, 62 N. J. Eq., 111.

To vest jurisdiction in the Court of Chancery two jurisdictional facts must appear; first, that the prior incumbrances are disputed; second, that the property is of such a character that it will materially deteriorate in value pending the litigation. *Reilly v. Penn Cordage Co.*, 58 N. J. Eq., 459.

82. Receiver of railroad, public work, etc., may sell or lease principal work, franchise, etc.

Whenever a receiver of a corporation shall have charge of a canal, railroad, turnpike or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stockholders and creditors have an interest, the receiver may sell or lease the principal work for the construction whereof the said corporation was organized, together with all the chartered rights, privileges and franchises belonging to it and appertaining to such principal work; and the purchaser or purchasers, lessee or lessees of such principal work, chartered rights, privileges and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of said corporation, or during the term in such lease specified, in as full and ample a manner as such corporations could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations and conditions contained in such charter; provided, that nothing in this section con-

tained shall be so construed as to apply to or in any-wise affect any corporation authorized by law to exercise banking privileges.

P. L. 1842, p. 164; P. L. 1870, p. 55; Act of 1875, §85.

An individual, purchasing the franchises of a corporation at a receiver's sale held pursuant to this section, holds such franchises, in view of the act of February 17, 1881 (P. L., p. 33), as a body politic and corporate, and has no power as an individual to convey such franchises to another person. *McCarter v. Vineland Light & Power Co.*, 70 Atl. Rep., 177.

The grant of a franchise must be construed with reference to the limitations contained in the charter of the grantee. The municipal consent required by the charter of the Jersey City & Bergen Railroad Company, was assumed to be limited to 25 years and to expire in 1884 because, although the consent was not limited in duration, nevertheless, it was declared to be limited by the term of the charter. *Jersey City v. North Jersey St. Ry. Co.*, 74 N. J. Law, 774.

83. Laborers and workmen to have first lien on assets.

In case of the insolvency of any corporation the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.

P. L. 1849, p. 309; Act of 1875, §63; P. L. 1887, p. 99; P. L. 1892, p. 426.

Section 83 refers exclusively to natural persons, and not to corporations. In *re Barr-Dinwiddie Printing & Bookbinding Co.*, 42 Atl. Rep., 575.

The lien covers only assets in the receiver's hands. *Hinkle v. Camden Safe Dep. & Tr. Co.*, 47 N. J. Eq., 333.

Such lien is not prior to that of a mortgagee, whose mortgage was executed and recorded before the services were rendered. *Ibid.*

The person who furnishes the labor or services of others under a contract to do the whole business of a corporation, or a particular branch of it, is not an employee, but a contractor, and has no lien by virtue of Section 83. *Lehigh Coal & Navigation Co. v. Central R. R. Co. of N. J.*, 29 N. J. Eq., 252.

A superintendent of the work of constructing a railroad voluntarily advanced his own money to pay the workmen for their work, supposing the company to be solvent. The company was afterwards adjudged insolvent. In the absence of an assignment of the claims of the workmen to him, or any agreement that he should have the benefit of their liens, it was held that he was not by subrogation entitled to the workmen's statutory liens for such payments. *North River Construction Company's Case*, 38 N. J. Eq., 433; *Campbell v. Taylor Mfg. Co.*, 64 N. J. Eq., 622.

The president is not entitled to a lien for services as president; he is a member of the corporation and cannot be both employer and employee. The word laborer includes all persons doing labor or service of whatever character for or as workmen or employees in the regular employ of such corporation. *England's Executors v. Beatty Organ Co.*, 41 N. J. Eq., 470. The corresponding section of the Act of 1875 was amended in 1887. Another act was passed in 1892 which was held by the courts to supersede the prior section, although not expressly repealing it. *Mersereau v. Mersereau Co.*, 51 N. J. Eq., 382. The present section is substantially the same as the Act of 1892. Under the Act of 1892 it was held that a bookkeeper, although a director, in the regular employ of a corporation was entitled to the lien given by the statute. *Consolidated Coal Co. v. Keystone Chemical Co.*, 54 N. J. Eq., 309.

In *Fitzgerald v. Maxim Powder Mfg. Co.*, 33 Atl. Rep., 1064, the word "assets" was construed to include the entire assets or property of the corporation which came to the receiver for administration, whether incumbered by previous liens or not, with certain exceptions (which are set forth in the next section). It was held, therefore, that the lien of laborers was prior to the lien of a judgment entered before the insolvency of the company.

The right of preference is statutory, and does not vest until the happening of the statutory requirements. It is created only when insolvency proceedings are begun and then arises in favor of those persons and for such amounts and under such conditions as the legislation on the subject then in force may prescribe. It was held that employees acquired no vested right by virtue of the Acts of 1875 and 1887, such acts being superseded by the Act of 1892. The law recognizes no distinction between apprentices and other employees; the rule in *Bedford v. Newark Machine Co.*, 16 N. J. Eq.,

117, has been changed by statute. *Mingin v. Alva Glass Mfg. Co.*, 55 N. J. Eq., 463.

This section being in derogation of the common right of creditors of the same class to be paid equally must be construed strictly. And the right conferred by it is held to be personal, inherent in the person alone who actually performs labor or services. *Lehigh Coal & Nav. Co. v. C. R. R. Co. of N. J.*, 29 N. J. Eq., 252. See *Cogan v. Conover Mfg. Co.*, 69 N. J. Eq., 358, 386.

A drayman, who is regularly employed, and whose services are essential to the conduct of the business of a corporation, is entitled to protection under this section. *Watson v. Watson Mfg. Co.*, 30 N. J. Eq., 588. Likewise, a manager, though a stockholder and director, who has supervised and organized the operative force. *Buvinger v. Evening Union Printing Co.*, 72 N. J. Eq., 321.

Labor claims are always to be paid in full, unless it is necessary to encroach upon them to meet the expenses of the receivership. *Lyle v. Staten Island Terra Cotta Lumber Co.*, 62 N. J. Eq., 797.

A mechanic's lien should receive preference although filed in the name of the corporation and although no action to enforce it has been begun within the four months. *Doty v. Auditorium Pier Co.*, 56 Atl. Rep., 720; *aff'd Id.*, 1132.

The rule as laid down in *Wright vs. The Wynockie Iron Co.*, 48 N. J. Eq., 29, was changed by the Act of 1892 (P. L. of 1892, p. 426). See also *Vail v. Jameson*, 41 N. J. Eq., 648.

84. Priority of lien; exception.

Such lien shall be prior to all other liens that can or may be acquired upon or against such assets, except the lien and incumbrance of a chattel mortgage, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and incumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as against the

lien of mortgages given upon the lands and real estate of such insolvent corporation.

P. L. 1849, p. 309; Act of 1875, §63; P. L. 1887, p. 99; P. L. 1892, p. 426.

This section defines and limits the only liens which are allowed to take preference over the lien of laborers.

A chattel mortgage, void as to creditors, may still be valid as against the claims of a receiver of an insolvent corporation. *Fidelity Trust Co. v. Staten Island Clay Co.*, 70 N. J. Eq., 550, 558.

85. Compensation of receivers.

Before distribution of the assets of an insolvent corporation among the creditors or stockholders the court of chancery shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the cost of the proceedings in said court, to be first paid out of said assets.

Receiver's allowances and his expenses in winding up the company are entitled to preference over state franchise taxes. *Chesapeake & Ohio Ry. Co. v. Atlantic Transportation Co.*, 62 N. J. Eq., 751.

In case of a "dry" receivership when services of a receiver and his counsel amounted practically to a mortgagee's suit to foreclose liens, they should be allowed the same compensation as if they had been appointed in a suit to foreclose the mortgage. *Lembeck v. Jarvis Terminal Cold Storage Co.*, 68 N. J. Eq., 352; s. c., 69 Id., 781; 70 Id., 757. *Boehme, Rec'vr, v. Rall*, 51 N. J. Eq., 541.

A court cannot discharge a receiver from his trust except on an accounting. Reference to a master may be had for this purpose. *Strauss v. Casey Machine & Supply Co.*, 69 N. J. Eq., 19; s. c., 66 Atl. Rep., 958.

As to compensation of counsel, see *Silvers v. Merchants' & Merchants' Sav. Fund & Bld. Ass'n*, 56 Atl. Rep., 294.

The court may make orders by which a receiver's claim for compensation will be preferred. *Nessler v. Land Development Co.*, 65 N. J. Eq., 491.

86. Distribution; how made.

After payment of all allowances, expenses and costs, and the satisfaction of all special and general

liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors; and the creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares.

P. L. 1829, p. 63; Act of 1875, §80; P. L. 1877, p. 74.

The language of this section does not create a statutory preference irrespective of the charter. The words "preferred stockholders" must be construed to mean "preferred stockholders according to their preferences as created by express language in the certificate of incorporation."

The Revision of 1896 eliminated the statutory preferences contained in the Act of 1875. Therefore, unless by express language in the certificate of incorporation the preference shares are entitled to payment of the principal in case of dissolution or liquidation before payment to the common stockholders, this section does not create such a preference.

This section and Sections 8 and 18, when considered in connection with the spirit of the laws and decisions, lead to the conclusion that, in the absence of other stipulations, preferment as to dividends means also preferment in distribution of assets on dissolution. *Hellman v. Penn. Electric Vehicle Co.*, 67 Atl. Rep., 834.

When the preferred stockholders are entitled to preference in the distribution of assets the act of the directors as statutory trustees of a voluntary dissolution in reducing the value of the preferred stock to the amount actually paid in thereon, is not unlawful justifying a receivership where the money, if paid in, would necessarily be repaid to the same persons. *Id.*

Calling stock "preferred stock" does not, per se, define the rights of such stock. In order to determine in what respect the holder of such stock is to be preferred to the holder of ordinary stock, recourse must be had to the certificate of incorporation, in

which the preferences must be "stated and expressed." Sec. 18. *Elkins v. Camden & Atl. R. R. Co.*, 36 N. J. Eq., 233, 236.

Sections 8 and 18 make it clear that the Legislature intended to require all the conditions under which stock is issued to be set forth in the certificate. Section 86 requires that the preferred stock shall be paid in preference to the general stockholders, and that means that they shall be paid so much, and so much only, as their contract gives them. *Lloyd v. Penna. Electric Vehicle Co.*, 72 Atl. Rep., 16.

McGregor v. Home Ins. Co., 33 N. J. Eq., 181, is therefore inapplicable under the present provisions of the act.

Following the case of the *State Bank v. Receivers of Bank of New Brunswick*, 3 N. J. Eq., 266, decided in 1835, and because of the fact that the rule in bankruptcy therein adopted has prevailed, with judicial recognition, for seventy years, the Court of Errors and Appeals holds that a creditor of an insolvent corporation holding collateral security should apply such security to the payment of his debt before entering his claim against the debtor. *Butler v. Commonwealth Tobacco Co.*, 70 Atl. Rep., 319; reversing 67 Atl. Rep., 514. In this case the leading decisions are reviewed.

Where preferred stockholders have not paid all instalments due on their stock they are not exempt from paying an assessment made to pay the debts of the corporation upon its insolvency. *Kirkpatrick v. American Alkali Co.*, 140 Fed. Rep., 186.

Persons accepting stock under a resolution directing its issuance to them for advances made to the corporation are stockholders and not creditors. *Iserman v. International Stoker Co.*, 72 N. J. Eq., 708.

Both mortgage and judgment creditors are preferred only so far as they have acquired liens. Under the Act of 1875 and until 1895 there was a distinction between mortgages for the purposes of preferring creditors and judgments confessed for the same purpose. The former were not prohibited, the latter were. *Doane v. Millville Ins. Co.*, 45 N. J. Eq., 274, 282; *Whittaker v. Amwell Nat'l Bank*, 52 N. J. Eq., 400, 414.

Under the Revision of 1896 no preferences whatever can be made by an insolvent corporation. See Section 64.

The franchise tax is a preferred debt in case of insolvency. Section 153. With this exception New Jersey does not possess the crown's common law prerogative to have its debts paid in preference to the debts of other creditors. *Frecholders of Middlesex Co. v. State Bank*, 29 N. J. Eq., 268; *aff'd* 30 Id., 311; see also *Evans v. Walsh*, 41 N. J. Law, 281.

Where no return is made under P. L. 1901, p. 31, claiming the exemption allowed a manufacturing corporation, the tax assessed by the State Board of Assessors on the full amount of the authorized capital stock of the company must be paid though the company

was judicially declared insolvent prior to the year of such assessment. *King v. American Electric Vehicle Co.*, 70 N. J. Eq., 568.

Stockholders incurring liabilities under an agreement which is repudiated subsequently by the holder of a majority of the stock are entitled to stand as creditors and enforce an equitable lien. *Wood & Nathan Co. v. American Mach. & Mfg. Co.*, 62 Atl. Rep., 768.

The fact that a claim against an insolvent corporation was purchased for less than its par value does not authorize the receiver to refuse its allowance on the basis of par value. *Dimmick v. W. Fred Quimby Co.*, 21 N. J. L. J., 339. But see *Taylor v. Gray*, 59 N. J. Eq., 621, where the claimants were also directors, and where it was held that assets withdrawn after insolvency of a corporation to secure some of the directors against a liability incurred in behalf of the corporation may be recovered by the receiver. But directors who have become sureties for creditors will be subrogated to the rights of such creditors.

As to the right of a judgment creditor to assert a prior lien on property of an insolvent corporation, see *Squire v. Princeton Lighting Co.*, 72 N. J. Eq., 883.

The right of a preferred creditor to full payment outranks the right of a general creditor to partial payment. *Lyle v. Staten Island, &c., Lumber Co.*, 62 N. J. Eq., 797.

This section is based on the rule that equality is equity. Therefore, equity will not reform an instrument where the effect of such reformation would be to prefer certain creditors of an insolvent corporation, and when the parties have not acted on the instrument to their detriment. *Miller v. Savage*, 62 N. J. Eq., 746.

Under this section all stockholders of the same class stand on an equality as to rights and there can be no preference. But when stock has been fraudulently issued the holders of such fraudulent stock may be excluded from the distribution of assets at the instance of subsequent stockholders who paid full value for their stock. *Weber v. Nichols*, 75 Atl. Rep., 997.

A stockholder who subscribes for stock and assigns mortgages in payment therefor merely for the purpose of giving the company credit and on condition that the company will redeem the stock, and who loses by the transaction, cannot recover the amount from the insolvent corporation as against bona fide stockholders and creditors. *Eisenlord v. Oriental Ins. Co.*, 29 N. J. Eq., 437.

The rights of the holder of a confessed judgment; of a creditor to attack the claim of a co-creditor; of secured bondholders; of mortgagees when the receiver operates the plant; of creditors who fail to enter appearance in bankruptcy proceeding until after adjudication has been made; of sureties on a bond of an insolvent corporation; of an assignee to payments under an executory contract, and of bona fide holders of coupon mortgage bonds, are discussed in *Consol.*

Coal Co. v. Nat'l State Bank of Camden, 55 N. J. Eq., 800; Pattberg v. Pattberg & Bros., 55 N. J. Eq., 604; Boyce v. Continental Wire Co., 125 Fed. Rep., 740; In re Urban & Suburban Realty Title Co., 132 Fed. Rep., 140; Conklin v. U. S. Shipbuilding Co., 136 Fed. Rep., 1006; Shinn v. Kummerle, 72 N. J. Eq., 828; Cogan v. Conover Mfg. Co., 659 N. J. Eq., 809, and Lembeck v. Jarvis Terminal Cold Storage Co., 70 N. J. Eq., 757.

“Creditors shall be paid proportionally” is construed in *Consol. Coal Co. v. Nat'l State Bank of Camden*, *supra*.

VIII.—Service of Process.

87. Process against corporations of this state.

In any personal action commenced against a corporation in any of the courts of law of this state, the first process to be made use of may be a summons, a copy whereof shall be served on the president, or other head officer or agent in charge of its principal office in this state, or left at his dwelling-house or usual place of abode, at least six days before its return; and in case the president or other head officer or agent cannot be found to be served with process, and has no dwelling-house, or usual place of abode within this state, a copy of the summons shall be served on the clerk or secretary of the corporation, if any there be, and if no clerk or secretary, then on one of its directors, or left at his dwelling-house, or usual place of abode, six days before its return.

P. L. 1865, p. 467; Act of 1875, §§87-88.

Sections 87 and 88 relate to the service of process in personal actions, where the fruits of the litigation are secured by a common law judgment to be executed upon the property of the defendants. They do not apply to proceedings under prerogative writs (*mandamus*, etc.), which are enforceable only by attachment for contempt in disobeying the commands of the court. *Freeholders of Mercer v. Penna. R. R. Co.*, 41 N. J. Law, 250; *s. c.*, 42 Id., 490. A writ of *mandamus* should be directed either to the corporation, or to the select body within the corporation, whose province and duty is to perform the particular act, or to put the necessary machinery in

motion to secure its performance, and the return must be made by those to whom the writ was directed. *Ibid.*

But service of such writs may be made on foreign corporations by serving on an officer or agent as prescribed by Sections 102 and 103.

Sections 87 and 88 refer to the mode of serving process in the higher courts, and not when issued by justices of the peace. Such process must be served in the manner prescribed by the Small Causes Act (Revision of 1903). *D., L. & W. R. R. Co. v. Ditton*, 36 N. J. Law, 361; *Wheeler & Wilson Mfg. Co. v. Carty*, 53 N. J. Law, 336; P. L. 1903, p. 251; amended P. L. 1904, p. 72; P. L. 1906, p. 47.

Section 87 prescribes the manner in which a summons may be served. As to subsequent process the principle is, that service must be made upon some person upon whom the duty devolves by virtue of his official position, or of his employment, to communicate the fact of service to the governing power in the corporation. A service on such a person is a service on the corporation. See Section 87b. *Dock v. Elizabethtown Steam Mfg. Co.*, 34 N. J. Law, 312, 318; *Facts Pub. Co. v. Felton*, 52 N. J. Law, 161. But see *Norton v. Berlin Iron Bridge Co.*, 51 N. J. Law, 442; *Laufman & Co. v. Hope Mfg. Co.*, 54 N. J. Law, 70.

There is nothing in this section to prohibit the voluntary appearance of a corporation. *Beebe v. George H. Beebe Co.*, 64 N. J. Law, 497.

Substituted service may be used to bring in foreign defendants. *Sohege v. Singer Mfg. Co.*, 68 Atl. Rep., 64.

In the case of a domestic corporation the implication is that the appointment of a registered agent shall be made or renewed annually; there is no presumption that such agency continues indefinitely. *Lenhart & Hoffman v. American School Furniture Co.*, 32 N. J. L. J., 49, February, 1909.

See *Penn. R. R. Co. v. Kreitzman*, 57 N. J. Law, 60; *Saunders v. Adams Ex. Co.*, 71 N. J. Law, 270; *aff'd Id.*, 520; *Chambers v. Dwyer*, 41 N. J. Law, 93.

87a.* Service of declaration on corporation.

Where the defendant is a corporation, service [of the declaration] may be made by delivering the same to the president or other head officer, or to the secretary or clerk thereof, personally, or by leaving the same at his dwelling-house or place of abode; and the

*Arbitrary number; section inserted here merely for convenience of reference.

plaintiff, if he shall be entitled to costs in the cause, shall be allowed for such service the sum of two dollars for each defendant so served, not exceeding three, and the same to be included in the taxed bill of costs. †

(“An act to regulate the practice of courts of law (Revision of 1874),” §106. See Gen. Statutes, p. 2551.)

†By Chap. 226, Laws of 1903, corporate existence is admitted in judicial proceedings unless specifically denied. See Section 137.

87b.* Service upon an agent.

In any suit or proceeding heretofore or hereafter begun in the court of chancery against a corporation of this State, process of subpoena or other writ, notice, orders and papers of any nature whatsoever in such suit or proceedings served upon the president, vice president, a director or the designated agent of the corporation or other officer thereof, shall be good and effective service upon the corporation.

(Supplement to “An Act respecting the Court of Chancery (Revision of 1902),” approved April 11, 1907; P. L. 1907, p. 76.)

Service of subpoena ad respondendum upon a domestic corporation defendant in a foreclosure suit by delivering the same at the registered office of the company in the state to the vice-president, also a director, is service upon the corporation. *Martin v. Atlas Estate Co.*, 72 N. J. Eq., 416.

After general counsel for a corporation announced to the attorney for the plaintiff that a certain agent was authorized to accept service, and service is thereafter made upon such agent, it is too late for the company to question the sufficiency of the service. *Taylor Provision Co. v. Adams Express Co.*, 71 N. J. Law, 523.

87c.* Service of summons of district court.

If the defendant be a domestic corporation, the summons shall be served on the president, or head officer, or agent in charge of its principal office, or any

*Arbitrary number; section inserted here merely for convenience of reference.

employee or clerk employed in any of its offices in the county, or left at his or her dwelling-house or usual place of abode, at least five days before its return. If the defendant be a foreign corporation, the summons shall be served upon any officer, director, agent or clerk, or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode in such county, or by leaving a copy at the office, depot or usual place of business of such foreign corporation in such county, at least five days before its return.

(“An act concerning district courts,” §46, as amended by Chap. 116, Laws of 1908, approved April 8, 1908; P. L. 1908, p. 181.)

P. L. 1877, p. 234, §23; P. L. 1898, p. 658, §46.

88. Process against foreign corporations.

In all personal suits or actions hereafter brought in any court of this state, against any foreign corporation, process may be served upon any officer, director, agent, clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation; provided, that in case there is no officer, director, agent, clerk or engineer of said corporation residing in this state, nor any office, depot or usual place of business in this state, process may be served upon any motorman, conductor or servant of said corporation while in the discharge of his duties.

(As amended by Chap. 113, Laws of 1908; P. L. 1908, p. 176.)
Act of 1875, §88.

In 1891 it was decided that a justice's court had no jurisdiction of a foreign corporation. *Wheeler & Wilson Mfg. Co. v. Carty*, 53 N. J. Law, 336. The next year, however, the Legislature amended the Small Causes Act so as to confer jurisdiction upon the justice's

court, providing "that any body politic or corporate of this state, or of any other state, may sue and be sued in any court for the trial of small causes, in any action or proceeding over which said court has jurisdiction." P. L. 1892, p. 182; Gen. Stat., p. 1896.

Service of process on foreign corporation.

The person to whom a foreign corporation commits the management and control of its business thereby becomes the agent of the corporation for the purpose of receiving service of process in all actions arising in this state out of the conduct of the business. *Moulin v. Insurance Co.*, 24 N. J. Law, 222, 234; s. c., 25 Id., 57, 65; *National Condensed Milk Co. v. Brandenburgh*, 40 N. J. Law, 111; *Norton v. Berlin Iron Bridge Co.*, 51 N. J. Law, 442.

The line between those who represent and those who do not represent a foreign corporation for the purposes of this act is defined in *Mulhearn v. Press Pub. Co.*, 53 N. J. Law, 150.

As to the acquiring of jurisdiction by the United States courts of a corporation not having an officer or a place of business in the state, see *United States v. Standard Oil Co. of Indiana*, 154 Fed. Rep., 728.

In *Carroll v. N. Y., N. H. & H. R. R. Co.*, 65 N. J. Law, 124, it was held that service on the engineer in charge of defendant's boat for transferring cars from Jersey City to the Harlem River was not good.

The United States Circuit Court, however, in *Devere v. D. L. & W. R. R. Co.*, 60 Fed. Rep., 886, held that service on a locomotive engineer was good.

An officer of a foreign corporation casually within the state on business of his own, where the corporation has never transacted any business within the state, is not a proper person to serve with process against the company. *Freeholders of Mercer v. Penna. R. R. Co.*, 42 N. J. Law, 490; *Moulin v. Ins. Co.*, 25 N. J. Law, 57, 61; *Camden Rolling Mill Co. v. Swede Iron Co.*, 32 N. J. Law, 15.

An officer of a foreign corporation who comes into the state for the purpose of giving testimony is privileged from service of a summons in an action against the corporation while he is so in attendance as a witness, and a service made under such circumstances will be set aside. *Mulhearn v. Press Pub. Co.*, 53 N. J. Law, 153; see also *Puster v. Parker Mercantile Co.*, 64 N. J. Eq. 599; s. c., 70 Id., 771.

Service upon a person whose only connection with the corporation is contingent and when the connection has ceased, is not service upon an agent within the meaning of this section. *Hass v. Security Ins. Co.*, 57 N. J. Law, 388.

Service upon a mere employee who has no general charge over corporate concerns and no connection with the business from which

authority may be inferred, is not good service. *Erie R. Co. v. Van Allen*, 69 Atl. Rep., 484.

Service is complete if a copy of the summons is left at the office of a division superintendent with the chief clerk. *Hygea Brewing Co. v. Erie Ry. Co.*, 69 Atl. Rep., 981.

A corporation is bound by service on its agent at any time before the suitor has notice of the determination of the agency. *Capen v. The Pacific Mut. Ins. Co.*, 25 N. J. Law, 67.

When the object of a bill is to affect property outside of the state owned by a foreign corporation, and when the defendant is not a resident or citizen of the state and has not subjected itself to the jurisdiction of the state, the court can acquire jurisdiction only by service of process within the state or by voluntary appearance of defendant. *Wilson v. Am. Palace Car Co.*, 65 N. J. Eq., 730; reversing 64 N. J. Eq., 534; *Minnesota v. Northern Securities Co.*, 184 U. S., 199.

In *Brush Creek Coal & M. Co. v. Morgan-Gardner Electric Co.*, 136 Fed. Rep., 505, it was held that service of process on a general officer of a corporation who was voluntarily in the state to attempt an adjustment of the difference in question was valid service. The case of *St. Clair v. Cox*, 106 U. S., 350, is discussed.

Where the cause of action arises in this state, while the corporation was transacting business under the statutory license, a Court of Chancery may acquire jurisdiction by service of process on the designated agent whether the corporation is actually engaged in business in the state at the time of service or not. *Groel v. United Electric Company*, 69 N. J. Eq., 397.

Service of summons in Small Cause Court. *Roake v. Penna. R. R. Co.*, 70 N. J. Law, 494.

Jurisdiction over a foreign corporation may be acquired by substituted service. *McCarter v. Pitman, Glassboro & Clayton Gas Co.*, 69 Atl. Rep., 211.

As to the service of prerogative writs against foreign corporations, see Sections 102 and 103.

89. When defendant in court.

When the sheriff or other officer shall return such summons "served" or "summoned," the defendant shall be considered as appearing in court, and may be proceeded against accordingly.

Act of 1875, §89.

Where a sheriff, in making his return, added other words in the statutory indorsement "served," such words were held to be surplusage. *Norton v. Berlin Iron Bridge Co.*, 51 N. J. Law, 442.

90. Proceedings when summons not served.

In case the sheriff or other officer shall return a summons, issued against any corporation of this state, "not served" or "not summoned," and an affidavit shall be made to the satisfaction of the court that process cannot be served upon it, the court shall make an order directing the defendant to cause its appearance to be entered to the action, on a day to be specified in the order, a copy of which order shall be inserted in one of the newspapers published in this state, for at least three weeks, once in each week, and a copy thereof shall also be posted in three public places in this state, as shall be ordered by the court, for at least three weeks, and if the defendant shall not appear within the time limited by the order, or within such further time as the court shall limit, then, on proof of the publication and posting of the order, the court shall order the clerk to enter appearance for the defendant, and thereupon the action shall proceed as if the defendant had entered its appearance to the action.

Act of 1875, §90.

91. Corporation not to convey property after order for publication made, until plaintiffs claim satisfied or judgment entered for defendant.

No corporation against which an order for publication shall be made, as aforesaid, shall grant, bargain, sell, alien or convey any lands, tenements or real estate in this state (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of the circuit court or the court of common pleas), of which it shall be seized or entitled to at the time of making such order,

until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements and real estate, from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.

Act of 1875, §91.

IX.—Remedies Against Officers and Stockholders.

92. Action for liability imposed by act; remedy in chancery.

When the officers, directors or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them; and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.

P. L. 1846, pp. 70-71; P. L. 1849, p. 307; Act of 1875, §§93-94.

Sections 92 and 94 relate to cases where officers, directors or stockholders are made specifically liable by the provisions of the act for the payment of the debts of the company, and provide in such cases for actions by the creditor. See Section 52. An action against stockholders to enforce payment of subscriptions for stock must be by general creditors' bill for the benefit of all. *Wetherbee v. Baker*, 35 N. J. Eq., 501, 505. See also *Clevenger v. Moore*, 71 N. J. Law, 148.

Waters v. Quimby is an action under these sections. 27 N. J. Law, 296; aff'd 28 Id., 533.

93. Stockholders, etc., who pay company's debts may recover.

Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

P. L. 1846, p. 71; P. L. 1849, p. 307; Act of 1875, §95.

In *Mills v. Hendershot*, 70 N. J. Eq., 258, it is held that a director is subrogated to the rights of creditors who have been paid out of certain assets transferred to the directors for the payment of certain claims, the transfer being declared void under Section 64.

94. Property of director, etc., not to be sold for company's debt until remedy against the company has been exhausted.

No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall stay after execution levied, or other proceedings to acquire a lien, until such return shall have been made.

P. L. 1846, p. 71; Act of 1875, §96.

X.—Foreign Corporations.

95. Foreign corporation may hold and convey lands, etc.

Any corporation created by any other state or by any foreign state, kingdom or government may acquire by device or otherwise and hold, mortgage,

lease and convey real estate in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; provided, such foreign state, kingdom or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.

P. L. 1873, p. 76; Act of 1875, §99; P. L. 1882, p. 137; P. L. 1883, p. 220; P. L. 1887, p. 157.

See Section 95a.

95a.* Foreign corporations, other than municipal corporations, may acquire, own and dispose of real estate in New Jersey.

It shall be lawful for any foreign corporation whatsoever, other than municipal corporations, to purchase and convey, to lease, hold, occupy and use for the purposes of such corporation, such real estate in this state as may be devised or conveyed to it.

(“An act to authorize foreign corporations to acquire, own and dispose of real estate in this state,” as amended by Chap. 22, Laws of 1903, approved March 13, 1903, P. L. 1903, p. 41.)

This act takes from municipal corporations of another state statutory authority to acquire, hold and use real estate within the State of New Jersey.

96. Foreign corporations subject to this act.

Foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations.

P. L. 1873, p. 76; Act of 1875, §103.

A joint stock association formed under the New York statute was held to be a corporation in New Jersey, and as such empowered to sue and be sued, not, however, in a corporate name, but in the

*Arbitrary number; section inserted here merely for convenience of reference.

name of designated officers, as prescribed by the law of its creation. *Edgeworth v. Wood*, 58 N. J. Law, 463.

As to what constitutes doing business, see notes to §98.

A court of equity cannot exercise visitorial powers over the internal affairs and regulate the management of a foreign corporation. Internal affairs defined. *Jackson v. Hooper*, 76 N. J. Eq., 592.

Residence of corporation.

A corporation is a resident when it does business in the state and its officers reside where process may be served on them. *Brand v. Auto Service Co.*, 75 N. J. Law, 230.

97. Foreign corporations to file copy of charter, statement, etc., before commencing business.

Every foreign corporation, except banking, insurance, ferry and railroad corporations, before transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this state, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, together with his place of abode, upon which agent process against such corporation may be served, and the agency so constituted shall continue until the substitution, by writing, of another agent; upon the filing of such copy and statement the secretary of state shall issue to such corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued.

P. L. 1894, p. 346; P. L. 1895, p. 293.

The validity of laws imposing the terms on which foreign cor-

porations are permitted to do business in a state has been upheld by the Supreme Court of the United States in several important cases. The first case was *Paul v. Virginia*, 8 Wall., 168. It was held that a corporation is not a citizen within the meaning of that provision of the Constitution which declares that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states. And Mr. Justice Field in delivering the opinion of the court said: "The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created. As said by this court in *Bank of Augusta v. Earle*, 'It must dwell in the place of its creation and cannot migrate to another sovereignty. The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose.' "

This doctrine was reaffirmed in the case of *Horn Silver Mining Co. v. New York*, 143 U. S., 305, in which Mr. Justice Field, after quoting from the opinion of the former case, adds: "This doctrine has been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest." He further declared: "Having the absolute power of excluding the foreign corporation the state may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital." See also *Liverpool Ins. Co. v. Oliver*, 10 Wall., 566; *Ducat v. Chicago*, 10 Wall., 410; *Pembina, &c., Mining Co. v. Pennsylvania*, 125 U. S., 181; *Norfolk, &c., R. R. Co. v. Pennsylvania*, 136 U. S., 114; *Hooper v. California*, 155 U. S., 648; *Parke, Davis & Co. v. Roberts*, 171 U. S., 658; *Blake v. McClung*, 172 U. S., 239; *Orient Ins. Co. v. Daggs*, 172 U. S., 557.

Advertisements solicited in this state and inserted in a publication of another state, where the contract is completed, does not constitute the transaction of business in this state. *Bell Tel. Co. of Phila. v. Galen Hall Co.*, 72 Atl. Rep., 47.

Transaction of business by a foreign corporation within this section means the general prosecution of the ordinary business of the corporation, and this is not the necessary inference from isolated

sales. *Delaware & Hudson Canal Co. v. Mahlenbrock*, 63 N. J. Law, 281.

The question in any particular case is one of fact to be determined by the trial court. *Von Seyfried v. Vollers*, 75 N. J. Law, 405.

As to burden of proving that the certificate has not been filed, see *Allerton v. Grundy*, 67 N. J. Law, 55.

For a full discussion of the status of foreign corporations, see 6 *Thompson on Corporations*, Section 7875, et seq.

See also notes to Section 7, and *Wolf v. Lancaster*, 70 N. J. Law, 201; *Delaware & Atlantic Telegraph & Telephone Co. v. Pensauken Tp.*, 116 Fed. Rep., 910.

The numerous cases arising under the similar New York statute may be found in *White on Corporations* (seventh edition), pp. 29-38.

98. Cannot maintain action until certificate of secretary of state is obtained.

Until such corporation so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state; provided, that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five.

P. L. 1894, p. 346; P. L. 1895, p. 293.

In *Faxon Co. v. Lovett*, 60 N. J. Law, 128, it was held that this section did not apply where the contract was made without the state.

A single transaction entered into within the state by a foreign corporation authorized to do business in the state, does not amount to doing business in the state, so as to disenable the corporation to sue in its courts. *Henry v. Simanton*, 54 Atl. Rep., 153.

The prohibition by a state of the maintenance of actions in its court by a foreign corporation does not prohibit or limit the right of the corporation to maintain such action in the Federal courts nor does it prohibit the corporation from defending action in the state courts. *Blodgett v. Lanyon Zinc Co.*, 120 Fed. Rep., 893.

A corporation which makes a single sale of its product from its office outside of New Jersey to a person in New Jersey, and takes a guarantee of payment in New Jersey, does not transact business in the state within the meaning of the statute. *Delaware & H. Canal Co. v. Mahlenbrock*, 63 N. J. Law, 281.

A mortgage is an executed contract, and proceeding to foreclose it is not an action upon a contract such as is contemplated by the statute forbidding unqualified foreign corporations from bringing actions on contracts made within the state. The taking of a mortgage to secure a debt, by a foreign corporation not in the business of loaning money, is a mere incident of its business, and is not such an exercise of its corporate functions within the state as is forbidden by the statute. *American Net & Twine Co. v. Ginthens, et al.*, 21 N. J. L. J., 190.

"Our statutes allow a foreign corporation to hold mortgages on lands in this state, and complainant is entitled to recover the amount due, even though it has not filed the certificate required by Section 97 of the Corporation Act." *Manhattan, &c., Loan Ass'n v. Massareli*, 42 Atl. Rep., 284, 285.

Suits on contracts made outside of the state may be maintained although the corporation has not complied with the terms of these statutes. *Slater-Jennings Co. v. Specialty Paper Box Co.*, 69 N. J. Law, 214; *MacMillan Co. v. Stewart*, 69 N. J. Law, 212; *aff'd Id.*, 676; *Falaenau v. Reliance Steel Foundry Co.*, 69 Atl. Rep., 1098.

A corporation which comes into this state and organizes and controls another corporation, and thereby transacts business, is "doing business" in the state. *Groel v. United Electric Co. of N. J.*, 69 N. J. Eq., 397.

The statute is limited to contracts. It does not extend to torts. *United States, &c., Co. of Me. v. United States, &c., Co. of N. Y.*, 181 Fed. Rep., 182.

Presumption as to complying with law.

In certiorari proceedings where the prosecutors in their reasons filed did not question the status of a foreign corporation, the court will assume on final hearing that the corporation has complied with the prerequisites to doing business in New Jersey. *Benton v. City of Elizabeth*, 61 N. J. Law, 411; *aff'd Id.*, 693.

99. On death of agent, another to be appointed; penalty for failure.

If said agent shall die, remove from the state or become disqualified, such corporation shall forthwith file in the office of the secretary of state a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of state, upon being

satisfied that such omission has continued for thirty days, shall, by entry on the record thereof, revoke the certificate of authority to transact business within this state, and process against such corporation in actions upon any liability incurred within this state before the designation of another agent may, after such revocation, be served upon the secretary of state; at the time of such service the plaintiff shall pay to the secretary of state for the use of the state two dollars, to be included in the taxable costs of such plaintiff, and the secretary of state shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.

For provisions as to annual report to be filed by foreign corporation, penalty for such failure, and service of process in case of failure, see Section 43.

See *Groel v. United Electric Co.*, 69 N. J. Eq., 397.

100. Unlawful to transact business until authority is obtained.

Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the state the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the state.

P. L. 1894, p. 346; P. L. 1895, p. 293.

State laws have no extra territorial effect for the enforcing of penalties. *Alleghany Co. v. Allen*, 69 N. J. Law, 270; 196 U. S., 458.

A foreign corporation cannot maintain an action in contract in this state before receiving the certificate if the state laws under which such corporation was incorporated provide that a foreign corporation may not maintain an action in contract without such a certificate. *Wolf v. Lancaster*, 70 N. J. Law, 201.

100a.* Attachment against foreign corporations.

Attachments may issue against * * * corporations not created or recognized as corporations *of this state* by the laws of this state and joint stock associations.

§4, Attachment Act; P. L. 1901, p. 158.

Under this section of the attachment act before the Revision of 1901, it seems that a foreign corporation complying with the requirements of law to authorize it to carry on business in this state was not liable to attachment, but if such corporation owns property and transacts business here and has not complied with the requirements permitting it to do business in this state it is liable to attachment. *Goldmark v. Magnolia Metal Co.*, 65 N. J. Law, 341.

The language of this section is somewhat different from that of the Revision of 1874 (Gen. Stat., p. 99, §7), the words "*of this state*" italicized above being new. It is probable, however, that no change of meaning is effected.

The test is not whether a corporation is a resident or non-resident, but whether it is created or recognized as a corporation of this state by the laws of this state. *Brand v. Auto Service Co.*, 75 N. J. Law, 230.

The title of a receiver of a foreign corporation will be protected against attachment by other foreign corporations. *Merchants' National Bank of Boston v. Pennsylvania Steel Company*, 57 N. J. Law, 336.

101. Foreign corporations to pay same taxes, etc., required of New Jersey corporations in other states.

When, by the laws of any other state or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such foreign state or nation, the same taxes, fines, penalties, licenses, fees, obliga-

*Arbitrary number; section inserted here merely for convenience of reference.

tions and requirements of whatever kind shall be imposed upon all corporations of such other state or nation doing business within this state and upon their agents here; provided, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in this state.

P. L. 1894, p. 346; P. L. 1894, p. 446.

This section was first enacted in 1894. The Act of 1894 was impliedly repealed by "An Act for the licensing and taxation of foreign corporations," passed in 1904. But the Act of 1904 was expressly repealed in 1905. Under the common law doctrine of statutory construction the repeal of the Act of 1904 by the Act of 1905, operated to revive the Act of 1894. *Texas Co. v. Dickinson*, 75 Atl. Rep., 803.

This provision is not in conflict with Article 4, Section 7, paragraph 4, of the State Constitution. The constitutionality of such statutes has been upheld, since it is within the province of the Legislature to enact statutes which become operative upon the happening of a contingency named therein. *Texas Co. v. Dickinson*, 75 Atl. Rep., 803.

102. Service of prerogative writ against foreign corporation.

In any proceeding in any court of this state against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer, or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent or manager of such corporation.

P. L. 1881, p. 298.

103. How writs may be enforced upon failure to make return, etc.

In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make

a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the supreme court, court of chancery, or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights and credits of the corporation within this state.

P. L. 1881, p. 298.

See note to section 87.

XI.—Merger of Corporations.

104. Corporations of this state may merge and consolidate.

Any two or more corporations organized or to be organized under any law or laws of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation; but the provisions of this act relative to merger and consolidation shall not apply to any railroad company, insurance company (except companies for the insurance or guaranty of the title to lands), banking companies, savings bank or other corporation intended to derive profit from the loan and use of money, turnpike company or canal company.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

This section does not seem to warrant mergers of corporations without reference to their similarity. It is apparent that corporations organized under this Act and many corporations organized under other Acts may not merge, and a strict interpretation of the Act which permits corporations to consolidate, provided their purpose is to carry on business of a similar nature, would not warrant the merger of corpora-

tions where the business was not similar, such as a holding company and a manufacturing or mercantile corporation. The criterion laid down by this Act is the primary purpose of the corporation, not whether, as in the case of corporations whose charters provide for a multiplicity of purposes, some two might be similar. The question might resolve itself into the nature of the business actually transacted by each corporation as indicative of their primary purpose.

The power to merge is not to be implied. It exists only by plain legislative enactment. It follows that there is no right to consolidate without unanimous consent of stockholders, unless the power has been conferred by a statute that may be read into the contract of incorporation. *Colgate v. U. S. Leather Co.*, 72 Atl. Rep., 126.

A change in the objects of incorporation may not be accomplished by means of a consolidation agreement. *Ibid.*

Quaere.—It is a question whether the right of stockholders to object to the power of consolidation belongs only to stockholders who became such prior to the passage of the consolidation act, or pertains also to stockholders who became such after the passage of the act. *Ibid.*

Quaere.—Is a consolidation under this section voidable at the instance of a stockholder, when a number of directors in one company are also directors in the other? *Ibid.*

Is a consolidation agreement vitiated by the fact that it contains a provision for issuance of stock, without payment of money or equivalent value, for the purpose of inducing certain parties to take an interest in the company? *Ibid.*

A stockholder who acquiesces in a consolidation made pursuant to this statute until the identity of the two corporations is lost and the property exchanged and converted into new forms, is not entitled to a decree vacating such a merger. *Beling v. American Tobacco Co.*, 72 N. J. Eq., 32. See also *Dana v. American Tobacco Co.*, 72 N. J. Eq., 44; *aff'd* on the ground of laches in 69 Atl. Rep., 223.

For a discussion of what is adequate notice to a stockholder of a corporate meeting, see *Beling v. American Tobacco Co.*, *supra*; *Dana v. American Tobacco Co.*, *supra*.

A corporation organized to hold the stock of merging corporations obtained a loan for working capital. Held, The constituent companies were properly chargeable with the proportion of the loan which was used in their behalf. *Dittman v. Distilling Co.*, 64 N. J. Eq., 537.

Where two companies consolidate and mortgage bond holders exchange the bonds of one of the constituent companies for bonds of the new company but the trustee neglects to cancel the bonds of the constituent company, the question in equity whether the bonds are to be held satisfied, must be determined by the intent of the parties and the facts in the case. *Burlington City Loan & Trust Co. v. Princeton Lighting Co.*, 72 N. J. Eq., 891.

Where no substantial change in the management and control of a corporation is made when it is taken over by another corporation, the question whether a novation as to corporate debts exists is for the jury. *Parsons Mfg. Co. v. Hamilton Ice Mfg. Co.*, 73 Atl. Rep., 254.

Where consolidation is effected by exchange of stock and payment of cash at an enormous overvaluation, it has been held that such a contract is against public policy and will not be enforced. *Strickland v. National Salt Co.*, 76 Atl. Rep., 1048.

105. Consolidation or merger; how made.

The consolidation or merger shall be made under the conditions, provisions, restrictions, and with the powers hereinafter mentioned:

1. The directors of the several corporations proposing to merge or consolidate may enter into a joint agreement under the corporate seals of the respective corporations, for the merger or consolidation of said corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation, as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation (who shall hold their offices until their successors be chosen or appointed, either according to law or according to the by-laws of the said corporation); the number of shares of the capital stock, whether common or preferred, and the amount or par value of each share of such new or consolidated corporation; and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation, how and when the directors and officers shall be chosen or appointed; together with all such other provisions and details as such first-mentioned directors shall deem necessary to

perfect the merger consolidation of said corporation.

2. The agreement shall be submitted to the stockholders of each of said merging or consolidating corporations, separately, at a meeting thereof, to be called for the purpose of taking the same into consideration; and twenty days' notice of the time, place and object of such meeting shall be mailed to the last known post-office address of each of such stockholders; and at the said meetings of stockholders the said agreement of such directors shall be considered, and a vote of the stockholders of each corporation by ballot shall be taken separately, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy; and if the votes of the holders of two-thirds of all the capital stock of each of the said merging or consolidating corporations shall be for the adoption of said agreement, that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of merger or consolidation of the said corporations, and a copy of said agreement and act of merger or consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

P. L. 1883, p. 242; P. L. 188, p. 441; P. L. 1893, p. 121.

While this Act, providing for the merger and consolidation of corporations, might seem to authorize the issue of stock free from the restrictions contained in the Act as to original issues of stock, yet the safer rule and probably the true construction of the Act is that the provisions of these sections are subservient to the basic provisions of this Act restricting the issue of stock in accordance with the provisions of Sections 48-49. In other words, this Act does not authorize the issue of stock without regard to the provisions of Sections 48-49 and the

decisions based thereon, but is subservient to the basic rules in this respect.

See note to Section 17, and *Fry v. Miles*, 71 N. J. Law, 293.

As to return of specific stock transferred on consolidation, see *Harriman v. Northern Securities Co.*, 197 U. S., 244.

Laches will bar relief to a dissentient stockholder. *Dana v. American Tobacco Co.*, 69 Atl. Rep., 223.

106. Corporations merged or consolidated shall be one corporation.

Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same in the office of the secretary of state, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

107. Upon merging or consolidating, rights, etc., to be vested in new corporation.

Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every

other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

See *McMaster v. Drew*, 68 Atl. Rep., 771; *aff'd* 77 N. J. Eq., 270.

108. Dissenting stockholder of corporation having franchise for public use may petition court for appointment of appraisers.

If any of the corporations so authorized to merge or consolidate shall have the right to exercise any franchise, for public use, and any stockholder thereof not voting in favor of such agreement shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder or such consolidated corporation may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief

office of the corporation whose stockholders shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment of three disinterested appraisers to appraise the full market value of his stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and whose award (or that of a majority of them) when confirmed by the said court, shall be final and conclusive on all parties, and said consolidated corporation shall pay to such stockholder the value of his stock as aforesaid; and on receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the state, on the payment of such award into said court, said stockholder shall transfer his stock to the said consolidated corporation to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders; and in case the said award is not so paid within thirty days from the filing of said award and confirmation by said court, and notice thereof to be given in the manner aforesaid unto said stockholder or said consolidated corporation, the amount of the award shall be a judgment against said corporation, and may be collected as other judgments in said court are by law collectible.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

108a.* On merger or consolidation dissenting stockholder may have stock appraised.

1. Upon the merger or consolidation of any two or more corporations, which do not have the right to

* Arbitrary number; section inserted here merely for convenience of reference.

exercise any franchise for public use, into a single corporation, as provided by the act to which this act is a supplement, if any stockholder in any of said merging or consolidating corporations not voting in favor of such agreement of merger or consolidation, shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation, whose stockholder shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation for the appointment of three disinterested appraisers to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation; and thereafter the proceedings and the rights and remedies of the respective parties shall be the same as is provided in the act to which this act is a supplement in the case of the appointment of appraisers to appraise the market value of stock of dissenting stockholders of corporations enjoying the right to exercise any franchise for public use; and the judgment upon the award as provided for therein, shall be a judgment against said consolidated corporation, and shall be a lien on all the property and assets acquired by the consolidated corporation from the corporation so merged, subject only to such liens as existed against said property and assets at the time of such merger or consolidation.

2. Nothing herein shall in anywise limit, repeal or supersede the provisions of the one hundred and

eighth section of the act to which this is a supplement.

(Supplement of April 10, 1902; P. L. 1902, p. 700.)

It is held in *Colgate v. United States Leather Co.*, 73 N. J. Eq., 72; 75 Id., 229, that the directors, under this section, are bound to propose an agreement which does not unfairly impair the legal or equitable right of a preferred stockholder, and that such stockholder cannot be required to exercise any option of surrendering his stock on compensation until he has had an opportunity of joining in the consolidation "under terms and conditions" which, as to him, are legal and equitable.

In New York it has been held, that the provisions of a statute conferring upon corporations the right to merge, notwithstanding the dissent of a portion of the stockholders, are not unconstitutional as depriving the dissenting stockholders of their property without due process of law. *Colby v. Equitable Trust Co.*, 192 N. Y., 535.

109. Consolidated corporation authorized to issue bonds and mortgage property.

When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges and property, real, personal and mixed; provided, such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may purchase, acquire, hold and dispose of the stocks of other corporations of this state or elsewhere and exercise in respect thereto all the powers of stockholders thereof, and may issue capital stock, either

common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporations in exchange or payment for their original shares, in the manner and on the terms specified in the agreement of merger or consolidation; which may fix the amount and provide for the issue of preferred stock based on the property or stock of the merging or consolidating corporations conveyed to the consolidated corporation, as well as upon money capital paid in.

P. L. 1883, p. 242; P. L. 1888, p. 441; P. L. 1893, p. 121.

The issue of stock in a corporation is subject to the rules of good faith and true value as provided in Sections 48-49; and this section does not authorize the issue of stock without regard to the basic provisions found in those sections of this Act.

Where an agreement for the merger of corporations provides for the exchange of the whole of an outstanding issue of bonds for new bonds of the consolidated corporation by depositing them with a trustee, and the deposited bonds are held by the trustee uncanceled, and the agreement is not consummated owing to the failure of some of the old bondholders to assent, the question whether the bonds actually deposited are to be held as additional security for the benefit of those depositing them and taking new bonds in exchange, or for the benefit of all holders of the new bonds, depends upon the intention of the parties and the facts of the case. *Burlington City L. & T. Co. v. Princeton Lighting Co.*, 72 N. J. Eq., 891.

Corporations in New Jersey are not restricted in their power to issue bonds whether secured by mortgage or otherwise. See note under Section 1, at p. 4.

In *Beling v. American Tobacco Co.*, 72 N. J. Eq., 32, it was held that 6 per cent. bonds are a fair equivalent for 8 per cent. preferred stock in the proportion of one and a third face value of bonds to one of stock.

XII.—Taxation.

110. Real and personal property; how taxed.

All real and personal property of every corporation shall be taxed the same as the real and personal property of an individual; provided, that this *action shall

* So in original. Error for "section."

not apply to railway, turnpike, insurance, canal or banking corporations, or to savings banks,[†] or to cemeteries, church property, or purely charitable or educational associations.

Act of 1875, §105; P. L. 1878, p. 61; P. L. 1879, p. 348; P. L. 1886, p. 345.

Real property must be assessed at its true value. P. L. 1901, pp. 209, 210.

At one time corporations were taxed on the full amount of their capital stock paid in and on accumulated surplus. The Tax Act of 1866, P. L. 1866, p. 1078, provides "that all private corporations of this state, except banking institutions and those which, by virtue of any contract" (for an instance of such contract see *Singer Mfg. Co. v. Heppenheimer*, 58 N. J. Law, 633) "in their charters or other contracts with this state, are expressly exempted from taxation, and except mutual life insurance companies specially taxed, shall be assessed at the full amount of their capital stock paid in and accumulated surplus; and that the person holding the stock shall not be assessed therefor. * * * The Act of 1866 sometimes worked injustice to corporations by subjecting them to a tax on the full amount of their stock paid in, making no allowance for impairment of capital, and the design of the Laws of 1875 and 1878 (Section 105 of the Corporation Act of 1875 and the amendment thereof, corresponding to Section 110 of the present act), was to relieve against that hardship by establishing a fairer and better method of taxation by making the property of the corporation the subject of taxation instead of the capital stock or stock and surplus. The intention was merely to substitute the one method for the other in taxing the corporation." *Jersey City Gas Light Co. v. Jersey City*, 46 N. J. Law, 194.

The effect of the decision above quoted was that so much of the Act of 1866 as required the assessment of the full amount of capital paid in and accumulated surplus was repealed by implication, but that the provision exempting stock from taxation in the hands of the holders was still in full force and effect. *Jersey City Gas Light Co. v. Jersey City*, 46 N. J. Law, 194.

The constitutionality of this provision has been sustained. *State, Trenton Iron Co. v. Yard*, 42 N. J. Law, 357.

The visible personal property of a corporation is assessed and taxed in the township or ward where such property is found. (P. L. 1891, p. 192, §6), and other personal property where its principal office is located (Gen. Stat., p. 3294, §67), and its real estate is assessed in the township or ward where it is situated. P. L. 1901, p. 199.

[†] Or to trust companies. P. L. 1899, p. 467.

The taxation which this section comprehends should not be confused with the franchise tax or license fee which corporations are required to pay under the Act of 1884 (§150 et seq., post.). That is a tax or fee which the state exacts as a condition to the grant of a corporate franchise and is not a property tax. Nor, on the other hand, can the franchise be taxed as property by virtue of this section or the Tax Act of 1866. *Passaic Water Co. v. Paterson*, 56 N. J. Law, 471. Under this section and also the Act of 1866, only such property as is actually within the state can be taxed. The franchise tax is based upon the amount of capital stock issued and outstanding at par, without regard to its actual value. *Singer Mfg. Co. v. Heppenheimer*, 58 N. J. Law, 633. The franchise tax is a state tax; that under the Act of 1866 is a local tax. *Pipe Line Co. v. Berry*, 52 N. J. Law, 308; *aff'd* 53 Id., 212.

For a discussion of the limitation on the taxing power of a state contained in the provision in the Constitution which gives to the federal government the regulation of interstate commerce, see *Harvard Law Review*, Vol. 21, page 618, June, 1908.

Shares of stock are personal property and their location is governed by the place of residence of the stockholder or the place of deposit of the certificates. Such property does not follow the location of the corporation. Certificates of stock of a New Jersey corporation are not "property within this state" because the corporation is organized under the laws of New Jersey. If the certificates of stock are without the state of New Jersey then they are property without and not within the state. *Neilson v. Russell*, 71 Atl. Rep., 286. See also *Astor v. State*, 72 Id., 78.

Under the Tax Act of 1903, P. L. 1903, p. 394, stocks and bonds of corporations organized under the laws of foreign states held by citizens of New Jersey are exempt from taxation when taxes have been actually assessed and paid on the corporation's property in the state of its organization within twelve months. *Trenton v. Standard Fire Ins. Co.*, 73 Atl. Rep., 606.

Property deposited for an indeterminate period and mingled with other movable property acquires a situs in this state and becomes subject to local taxation. *Lehigh & Wilkesbarre Coal Co. v. Borough of Junction*, 75 N. J. Law, 922.

See also *Trenton Iron Co. v. Yard*, 42 N. J. Law, 357; *Jersey City Gaslight Co. v. Jersey City*, 46 Id., 194; *N. J. Hedge Co. v. Craig*, 51 Id., 437.

As to charitable institutions, see *Sisters of Charity v. Cory*, 73 N. J. Law, 699; educational institutions, see *Stevens Institute v. Bowes*, 70 Atl. Rep., 730.

Taxation by New York City of a New Jersey corporation.

Section 936 of the Charter of the City of New York relates to taxes imposed for personal property upon any person or corporation in

the City of New York. The words "any person or corporation in the City of New York" include only such persons or corporations as are residents of that city. The City of New York has no authority by virtue of any statute of the United States or of the State of New York, to enforce a tax as a personal liability against a non-resident person or corporation of New York, although such person or corporation had personal property within it and was subject to assessment and taxation. The remedy of the City of New York is in rem and not in personam. It can seize the specific property against which the tax is levied, if it can find it, but it cannot sue a foreign corporation and obtain a judgment against it to the amount of the tax assessment. *City of New York v. McLean*, 170 N. Y., 374, at p. 381.

Inheritance tax.

Although shares of stock in a New Jersey corporation have a situs and succession thereto may be taxed by the Legislature, still the act, May 15th, 1894 (P. L., p. 318), does not apply to stock in a New Jersey corporation belonging to a testator domiciled in a foreign state. *Neilson v. Russell*, 71 Atl. Rep., 286. This was the ruling of the Court of Errors and Appeals, but the law of 1894 was amended by the Laws of 1909 to include stock in a domestic corporation owned by a non-resident. See Sec. 20, ante.

110a.* Corporations entitled to same tax exemptions as natural persons.

All mortgages which, under the laws of this state, are exempt from taxation when owned by natural persons, shall be and are hereby declared to be, to the same extent, exempt from taxation when owned by corporations of this state, and the value thereof shall be deducted from the value of the capital stock and property of such corporations in ascertaining the net amount of capital stock and property thereof subject to taxation; provided, however, that nothing in this act shall be construed as in any wise affecting or reducing any franchise tax.

"An act concerning the taxation of corporate property and pro-

* Arbitrary number; inserted here merely for convenience of reference.

viding for certain exemptions therefrom," approved April 3, 1902; P. L. 1902, p. 546.

This act is in accordance with the policy of the State of New Jersey to tax the corporate dollar upon the same basis as the individual dollar. It places corporations upon the same basis as individuals with respect to the taxation of mortgages or mortgaged securities held by such corporations in New Jersey. While the act has special application to banks and trust companies, it includes as well corporations under this act. The exemption from taxation of mortgages in the hands of natural persons, referred to in the act, is that given where the mortgagor does not apply for a deduction on account of such mortgage indebtedness. Gen. Stat., p. 3319, Sec. 198. In certain counties and cities of the state the mortgagor may bind himself in the mortgage not to apply for such deduction. Gen. Stat., p. 2109, Sec. 37. The act even goes further and declares affirmatively that the amount invested in such mortgages may be deducted from the taxable value of the capital stock and property of such corporations.

The tax act of 1903 exempts "the personal property owned by citizens or corporations of this state situate and being out of the state upon which taxes shall have been actually assessed and paid within twelve months." This is a virtual re-enactment of the exemption provided in the act of 1866, which was construed to include stock in a foreign corporation owned by residents of this state, when the corporations had paid taxes on their property in their own state. *Smith v. Ramsey*, 54 N. J. Law, 546; *De Baum v. Smith*, 55 N. J. Law, 110.

A tax on the property of a corporation amounts to a tax upon stock within the meaning of this section. *Trenton v. Standard Fire Ins. Co.*, 73 Atl. Rep., 606.

XIII.—Lost Certificates of Stock.

111. New certificates of stock may be issued for certificates lost or destroyed.

Every corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as indemnity against any claim that may

be made against such corporation; a new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper so to do.

P. L. 1882 p. 205; P. L. 1892, p. 166.

See *In re Union Savings Bank & Trust Co.*, 26 N. J. L. J., 236.

A certificate of stock should not be issued to take the place of a lost certificate without a resolution of the board of directors. The new certificate should state that it is issued to take the place of a lost certificate, and the company should always require the party receiving the new certificate to give it a bond to indemnify the company against any loss by reason of the issue of such new certificate.

In the State of New York, questions arising under a similar statute have been passed upon as follows:

A corporation which has permitted a transfer of stock upon a forged power of attorney, and has cancelled the original certificates, may be compelled to issue new certificates to the rightful owner of the shares, or to pay him the value of such shares, in case it has no stock which it can issue to him. *Pollock v. National Bank*, 7 N. Y., 274.

The title of the true owner of a lost or stolen certificate may be asserted against any one subsequently obtaining its possession, although the holder may be a bona fide purchaser. *Knox v. Eden Musee Am. Co., Ltd.*, 148 N. Y., 441.

112. Proceedings in case of refusal to issue new certificate of stock.

Whenever any corporation shall have refused to issue a new certificate of stock in place of one therefore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate, or his legal representatives, may apply to the circuit court of the county in which the principal office of the corporation is located for an order requiring the corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition, duly verified, in which shall be stated the name of the corporation, the number and date of the

certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in the petition; a copy of the petition and order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in the order.

P. L. 1882, p. 205; P. L. 1892, p. 166.

113. Court may proceed in summary manner.

At the time and place specified in the order, and on proof of due service thereof, the court shall proceed in a summary manner and in such mode as it may deem advisable to hear the proof and allegations offered in behalf of the petitioner, or the corporation, or other interested party, relative to the subject-matter of inquiry, and if upon such inquiry the court shall be satisfied that the petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot, after due diligence, be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation or other party, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the

- petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner deposit such security, or file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

P. L. 1882, p. 205; P. L. 1892, p. 166.

XIV.—Fees on Filing Certificates; Sundry Provisions. .

114. Fees on filing certificates.

On filing any certificate or other paper, relative to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state; for certificate of incorporation, twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars for the total increase authorized, but in no case less than twenty dollars; consolidation and merger of corporations, twenty cents for each thousand dollars of capital authorized, beyond the total authorized

capital of the corporations merged or consolidated, but in no case less than twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization by this act; dissolution of corporation, change of name, change of nature of business, amended certificates of organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value or number of shares, twenty dollars; for filing list of officers and directors, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; and for all certificates not hereby provided for, five dollars; provided, that no fees shall be required to be paid by any religious or charitable society or association, or educational association having no capital stock.

P. L. 1883, p. 62; P. L. 1893, p. 448.

Under this section the fee for filing a certificate of change of location of principal office is twenty dollars. By a supplement to the corporation act another mode of changing such location is given, for which the fee is five dollars. See section 28a.

See *Nat'l Lead Co. v. Dickinson*, 70 N. J. Law, 596; *aff'd* 72 Id., 313.

For recording fees, see section 10a.

115. Surviving incorporators may designate others for organization.

When one or more of the commissioners or incorporators of any corporation, created by or under any general or special act, shall have died before the corporation shall have been organized, pursuant to law, the survivors or survivor may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid shall be as effectual

in law as if it had been effected by all the original commissioners or incorporators.

P. L. 1891, p. 321.

116. Mutual association may create capital stock.

The members of any mutual association heretofore or hereafter incorporated, may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of †corporation, and may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein.

P. L. 1888, p. 186.

117. Secretary of state to compile and publish list of corporations.

The secretary of state shall annually compile from the records of his office, and publish a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue.

P. L. 1889, p. 160.

118. Repealer; vested rights not impaired.

The act entitled “An act concerning corporations” (Revision), approved April seventh, one thousand eight hundred and seventy-five, and all acts amendatory thereof and supplemental thereto, except so far as herein expressly reënacted, are hereby repealed;

† So in original.

but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate of incorporation be thereby impaired or limited, and vested rights acquired under the repealed acts and actually exercised and enjoyed shall not be divested or disturbed, but no special provision relating to taxation, or immunity or exemption therefrom, contained in any special charter, shall be revived or continued by anything in this act; all acts and parts of acts, general and special, inconsistent with this act are hereby repealed; but this repealer shall not revive any act heretofore repealed.

119. Corporations may extend corporate existence.

Any corporation, created by special charter, or under a general law, for any objects which are allowed by this act, may extend its corporate existence in the manner prescribed in the twenty-seventh section of this act; provided, that if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this act, such extension shall not continue, renew or extend such franchises, powers, privileges, immunities or advantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges and advantages.

(Supplement of February 2, 1897; P. L. 1897, p. 11.)

See *Cooper Hospital v. Camden*, 68 N. J. Law, 691.

119a.* Extension, renewal and continuance of corporate existence.

1. The corporate existence of any corporation heretofore or hereafter created under or by virtue of any

* Arbitrary number; section inserted here merely for convenience of reference.

law of this state or of the successor of any such corporation may be extended, renewed and continued in the manner following: a meeting of the stockholders shall be called by a notice stating the object of the meeting signed by the holders of at least one-third in value of the outstanding capital stock of the company, which notice must be given personally or by mail to each stockholder at least ten days before the day of said meeting; if two-thirds in interest of each class of stockholders having voting powers shall vote in favor of such extension, renewal and continuation of corporate existence, a certificate thereof shall be signed by the presiding officer and secretary of said meeting, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent in person or by proxy of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and the certificate of the secretary of state that such certificate and assent has been filed in his office shall be taken and accepted as evidence of the extension, renewal and continuation of its corporate existence in all courts and places.

2. Upon making and filing such certificate and paying the fees now imposed or hereafter to be imposed upon corporations for certificates of incorporation, the period of existence of such corporation shall be extended as declared in such certificate; but the extension shall not be held to invest such corporation with any exclusive privileges, or exempt it from the operation of any general laws hereafter passed relating to the same class of corporations, or prevent the legislature from making applicable thereto any general law now in force relating to such class.

3. Nothing herein contained shall be construed to interfere with the right of the state of New Jersey,

reserved by any law now or hereafter existing, to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same, nor shall this act be construed to continue any irrepealable or other contract with the state contained in any charter beyond the time originally fixed for its expiration.

4. Nothing herein contained shall be construed as continuing in force and operation any special provision relating to taxation, or exemption therefrom, in the charter of any corporation whose corporate existence may have been or hereafter shall be extended, renewed and continued in conformity with the terms of this act; but each corporation whose corporate existence may have been or shall be extended, renewed and continued as authorized hereby shall be assessed for taxes in accordance with the provisions of the general law of this state relating to the taxation of corporations.

5. No corporation shall have the right to proceed under the provisions of this act unless it shall file with the certificate and written assent provided for in section one hereof an affidavit of the presiding officer and secretary of said meeting that it is at the time either actually engaged in, or has provided for, the conduct of the business for which it was incorporated; and in all cases where the charter of a corporation may have expired by limitation of time within four years next preceding the date when such corporation shall file the certificate herein mentioned, said corporation shall have the benefit of the right to proceed under the provisions of this act, and upon complying with the conditions set forth in this act the existence of such corporation shall be renewed, extended and continued as declared in said certificate with the same effect

and force as if the certificate, written assent and affidavit provided for herein had been filed prior to the expiration of such charter period, and as fully as if said period of extension had been named in the original charter or certificate of organization of such corporation.

6. The provisions of this act shall not apply to any savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a street railroad company, a telegraph company, a telephone company, a gas company, an electric light company, a turnpike company, a plank road company, or any company which possesses the right of taking and condemning lands in this state.

“An act concerning the extension, renewal and continuance of the existence of corporations organized under the laws of this state,” approved April 8, 1902; P. L. 1902, p. 630; as amended by Chap. 205, Laws of 1903; P. L. 1903, p. 391.

As to the rights of the stockholders of a corporation whose period of existence, as expressed in its charter, has expired, see *Mason v. Pewabic Mining Co.*, 133 U. S., 50.

The power to extend the existence of a corporation beyond the period fixed by its charter, on complying with the statute providing therefor, may be exercised unless it is specially excluded by its charter. *Smith v. Eastwood Wire Mfg. Co.*, 58 N. J. Eq., 331.

Supplemental and Miscellaneous Acts.

130.* Certain words not to be part of name of corporation.

1. No corporation shall hereafter be organized under the provisions of “An act concerning corporations” (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, or any amendment thereof or supplement thereto, with

* From this point the section numbers are entirely arbitrary, being used merely for convenience of reference.

the words "insurance" or "safe deposit" or "trust company" or "bank" as a part of its name, and no certificate of incorporation shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating its incorporation.

2. No corporation heretofore organized or doing business under the aforesaid act shall, by change or amendment of its name, use the words "insurance" or "safe deposit" or "trust company" or "bank" or any of them as part of its name, and no certificate of change or amendment shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating such change.

3. Nothing herein contained shall, however, be construed to apply to or affect the name of any corporation whose certificate of incorporation has heretofore been filed with the secretary of this state.

(Supplement of April 23, 1897; P. L. 1897, p. 274.)

See also P. L. 1899, p. 431, §1; p. 450, §1; p. 468, §1.

131. Liabilities created by statutes of other states not to be enforced in this state.

1. No action or proceeding shall be maintained in any court of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country.

2. No action or proceeding shall be maintained in any court of law of this state against any stockholder,

officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.

(Supplement of March 30, 1897; P. L. 1897, p. 124.)

In *Western National Bank v. Skillman*, 21 N. J. L. J., 375, the court refused where this act was set up in defence to non-suit an action to enforce a liability under the Kansas statutes incurred prior to the passage of the act, holding that the act was in violation of the provisions of the New Jersey constitution that the Legislature shall not pass any law "impairing obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made."

This act was also declared to be unconstitutional in *Western National Bank v. Reckless*, 96 Fed. Rep., 70.

See also *Hancock National Bank v. Farnum*, 176 U. S. 640, and *Whitman v. National Bank of Oxford*, 176 U. S., 559. *Leyner Engineering Works v. Kempner*, 163 Fed. Rep., 605.

As to penal liability, the Supreme Court, in 1858, held that an action brought by a creditor of a New York manufacturing company against a resident of New Jersey to recover on a liability incurred under a statute of New York making directors personally liable for corporate debts for failure to file annual reports, cannot be enforced in this state, on the ground that one state will not enforce a penal statute of another state. *Derrickson v. Smith*, 27 N. J. Law, 166.

132. Certain corporations required to pay employees wages at least every two weeks.

In 1899 an act was passed by the legislature, entitled "An act to provide for the payment of wages in lawful money of the United States every two weeks" (P. L. 1899, p. 69) which requires every corporation "organized under or acting by virtue of or governed by the provisions of 'An act concerning corporations' (Revision of 1896), in this state" to pay its employees in lawful money of the United States at least every two weeks. The act makes invalid any agreement between the employer and employee for the payment at longer intervals. Corporations violating the act are guilty of misdemeanor and may be punished by a fine not exceeding one hundred dollars and not less than twenty-five dollars for each violation.

A New York statute, regulating the payment of wages of employees of corporations, as applied to pre-existing corporations, was held to be a valid exercise of the reserved power of the Legislature to alter or amend the charters of corporations. *N. Y. Central and Hudson River R. R. Co. v. Williams*, 64 Misc., Rep., 15.

133. Corporation may lease its property and franchises to another corporation.

Any corporation of this state, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease its property and franchises to any corporation, and every corporation of this state is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and †that any such lease or assignment, or both, heretofore made, are hereby vali-

† So in original.

dated; provided, however, that nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this state.

“An Act Concerning Corporations,” approved March 24, 1899; P. L. 1899, p. 334.

See *Dickinson v. Consol. Traction Co.*, 119 Fed. Rep., 871, holding that a corporation could lease its franchise and property for 999 years.

Quaere.—May a corporation created under the General Corporation Act lease the franchise of a public service corporation? It would seem not. *Public Service Corporation v. De Grote*, 70 N. J. Eq., 454.

The act provides only for a transfer of franchises by lease or assignment by one corporation to another corporation. *McCarter v. Vine-land Light & Power Co.*, 73 N. J. Eq., 703.

A corporation leased and took over the plant and assets of another company. The only change in name was the omission of the word “The” from the name of the acquiring company. Held, whether on the principle of novation and estoppel the acquiring company was bound to pay a note given by the former company for apparatus, was a question for the jury. *Parsons Mfg. Co. v. Hamilton Ice Mfg. Co.*, 73 Atl. Rep., 254.

134. Errors and omissions in certificate of incorporation cured by amendment.

Whenever, in the certificate of incorporation or organization of any corporation organized under any general act of the legislature of this state, there shall be any error or omission in the recital of the act under which said corporation is created, or in the omission of any other matter which is required to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation

shall pass a resolution declaring that such error exists and that said corporation desires to correct the same, and shall call a meeting of the stockholders of said corporation to take action upon such resolution; the meeting of said stockholders shall be held upon such notice as the by-laws provide, and in the absence of such provision, then upon ten days' notice given personally or by mail; if two-thirds in interest of all the stockholders shall vote in favor of the correction of such error or omission, a certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of the secretary of state, and upon the filing thereof, the certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this act shall have the same force and effect as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

(Supplement of March 21, 1899; P. L. 1899, p. 174.)

This act is not of great importance. It is said to have been passed in the interest of a water company. The company was organized under the Water Companies Act of 1876. The certificate of incorporation recited that it was incorporated under the provisions of " 'An Act for the construction, maintenance and operation of waterworks for the purpose of supplying cities, towns and villages of this state with water,' approved April 21st, 1875," whereas said act was as a matter of fact approved April 21st, 1876. The error was not discovered until long after the certificate had been recorded and filed, and as a matter of precaution the directors of the company are said to have procured the passage of the above act and immediately filed an amended certificate of incorporation correcting the error. Sections 27 and 28 fully cover cases of correction of errors.

135. State taxes must be paid before dissolution.

Hereafter no corporation organized under any law of this state shall be dissolved by its stockholders until all taxes levied upon or assessed against such corporation by the state of New Jersey in accordance with the provisions of an act entitled "An act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," approved April eighteenth, one thousand eight hundred and eighty-four, and all acts amendatory thereof or supplementary thereto, shall have been fully paid, and a certificate to that effect, signed by the comptroller of the treasury, shall have been annexed to and filed with the certificate of dissolution.

(Supplement of March 23, 1900; P. L. 1900, p. 316.)

This act is intended to prevent corporations from dissolving and distributing their assets without paying the taxes already due to the state.

Where a company has filed no report with the State Board of Assessors claiming an exemption to which it was entitled, it is liable to the state for its franchise tax even though it was judicially declared insolvent prior to the time of the assessment. *King v. American Electric Vehicle Co.*, 70 N. J. Eq., 568.

136. Purchasers of property and franchises of certain corporations sold by order of court may become a new corporation.

See "An Act concerning the sale of the property and franchises of any corporation created by or under any law or laws of this state except steam-railroad, canal, turnpike or plank-road companies," approved April 16, 1897; P. L. 1897, p. 229.

137. Corporate existence is admitted in judicial proceedings.

In every suit or judicial proceeding in this state, to which a corporation is a party, the existence of such corporation shall be taken to be admitted, unless it

is put in issue by the pleadings; and in courts in which the practice is that the defendant need not file a plea, the existence of such corporation shall be taken to be admitted unless the party to the suit denying the existence of such corporation shall file with the court an affidavit stating that to the best of his or its knowledge and belief such corporation does not exist.

(Supplement of April 8, 1903; P. L. 1903, p. 490.)

This section is a legislative enactment of a rule which had originally been followed in practice. *MacMillan v. Stewart*, 69 N. J. Eq., 212; *aff'd Id.*, 676.

New York cases.

A party who has entered into a contract with another, in which the latter assumes to be and contracts as a corporation, is estopped from denying the corporate existence. *U. S. Vinegar Co. v. Schlegel*, 143 N. Y., 537, discussed in 148 N. Y., 58, 65.

In an action for goods sold to a corporation, the latter, under a general denial, cannot show that it was not incorporated at the time of the sale; to authorize such proof the answer must affirmatively allege the fact that the defendant was not a corporation. *Schmidt v. Nelke Art Lithographic Co.*, 17 Misc. Rep., 124.

The corporate character of a plaintiff is not put in issue by a mere allegation in an answer that "defendant has no knowledge or information sufficient to form a belief" as to the allegations of the complaint in respect thereto. To permit such proof the answer must affirmatively allege that the defendant was not a corporation. *Snow, Church & Co. v. Hall*, 19 Misc. Rep., 655.

138. Dissolution of educational institutions.

1. Whenever in the judgment of the board of trustees or managers of any corporation created by any law of this State for educational purposes, it shall be deemed advisable and for the benefit of said corporation that the same should be dissolved before the expiration of its charter, it shall be lawful for such board of trustees or managers to wind up and dissolve such corporation in the manner hereinafter prescribed, or in the name of said corporation, by petition, set-

ting forth the facts and circumstances of the case, to apply to the Chancellor for a dissolution of said corporation and for the appointment of a receiver or trustee of its estate and effects; whereupon the Chancellor, being satisfied of the sufficiency of said application, shall order such reasonable notice thereof to be served or published as he may judge proper and the circumstances of the case may require, fixing a day, not less than thirty days distant, for the hearing upon the same, and if, upon inquiry into the matter, it shall be made to appear to the Chancellor that such action may be taken without prejudice to the public welfare, and that it is advisable and best for said corporation that it should be dissolved, its affairs settled and its estate and effects divided and distributed among the stockholders, associate owners, creditors and others who may be entitled to the same, it shall be lawful for the Chancellor to enter a decree to that effect, and to appoint a receiver or trustee with full power to demand, sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description belonging to said corporation at the time of said decree of appointment, and to sell, convey or assign all the said real and personal estate; and to pay into the Court of Chancery all the moneys and securities for money arising from such sales, or which may be collected by said receiver or trustee from time to time under the order of the said Court of Chancery, first deducting the costs of the proceedings in said court, and making to said receiver or trustee and to counsel such reasonable compensation as the Chancellor may deem fit and proper.

2. The said receiver or trustee shall be further clothed with all the powers conferred upon a receiver

or trustee appointed under the act authorizing the appointment of a receiver or trustee in case of insolvent corporations; and it shall be lawful for the said Court of Chancery whether said corporation be dissolved by order of said court or by act of the board of trustees as hereinafter provided, to make all necessary and proper orders and decrees to settle and wind up the affairs of said corporation, and to distribute its estate, property and effects, or the proceeds thereof, among those entitled to the same, and if, at the time of the final decree of distribution, the owners of any part of said property or effects remain unknown, such part, share or shares shall be retained in the Court of Chancery until the same shall be claimed by the rightful owner or owners thereof.

3. In the event that such board of trustees or managers shall determine to wind up and dissolve such corporation without the appointment of a receiver therefor, the said board, at a meeting duly called and held for the purpose, of which meeting every trustee or manager shall have received at least three days notice, shall, by a two-thirds vote of the whole board of trustees or managers, adopt a resolution to that effect, and thereupon such trustees or managers, being not less than two-thirds of the whole number, shall signify their consent in writing that such dissolution shall take place, which consent, together with a list of the names and residences of all of the trustees or managers and officers, certified by the president and secretary, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of trustees or managers shall cause such certificate to be published four weeks successively, at least once a week in a newspaper pub-

lished in the county where the property of such corporation is situate; and upon filing in the office of the secretary of state of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and affairs in the same manner and with the same powers and duties as provided in the act to which this is a supplement in cases of other corporations which are dissolved under the provisions of said act.

4. After a sale of the property and assets of such dissolved corporation and the payment of its debts and all expenses connected with such winding up and settlement, the residue of moneys in hand, if any, shall be distributed and paid in the manner provided in the second section of this act.

(Supplement of April 2, 1908; P. L. 1908, p. 113.)

PROVISIONS OF THE EXECUTION ACT RELATING TO SHARES OF STOCK

140.* Shares of stock may be taken and sold on execution.

Any share or interest in any bank, insurance company or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution, in the same manner as goods and chattels.

(“An Act respecting any execution.” G. S., p. 1415, §4.)

The shares are not bound by delivery of the *fi. fa.* to the sheriff against the owner, but may be transferred before an actual levy. *Princeton Bank v. Crozer*, 22 N. J. Law, 383; *Rogers v. Stevens*, 8 N. J. Eq., 167; *Voorhis v. Terhune*, 50 N. J. Law, 147.

141. Officer having custody of books to give certificates to sheriff.

The clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company, shall upon exhibiting to him the writ of execution, give to the officer having such writ a certificate of the number of shares or amount of the interest held by the defendant in such company; and if he shall neglect or refuse so to do, or if he shall wil-

* Arbitrary section number; see footnote, p. 247.

fully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him.

(Id., §5.)

**142. Proceedings when such officer is a non-resident.
Notice of levy.**

When the clerk, cashier, or other officer of any joint stock company that is or hereafter may be incorporated under the authority of this state, who has the custody of the books of registry of the stock thereof, shall be non-resident in this state, it shall be the duty of the sheriff or other officer, receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company, to send by mail a notice in writing, directed to such non-resident clerk, cashier or other officer, at the postoffice nearest his reputed place of residence, stating in such notice that he, the said sheriff or other officer, holds such writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels, such writ has been issued, and that by virtue of said writ, he, the said sheriff or other officer, seizes and levies upon all the shares of the stock of such company held by the defendant in execution on the day of the date of such written notice; and it shall also be the duty of such sheriff or other officer, on the day of mailing such notice, as aforesaid, to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of said company, or upon such of them as reside in his county, either personally or by leaving the

same at their respective places of abode; and the sending, setting up, and serving of such notices in the manner aforesaid, shall constitute such levy taken, a valid levy of such writ upon all shares of stock in such company, held by the defendant in execution, which have not at the time of the receipt of such notice by the said clerk, cashier or other officer, who has custody of the books of registry of the stocks thereof, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution, shall be void as against the plaintiff in said execution, or any purchaser of such stock at any sale thereunder.

(Id., §6.)

As to the duty of sheriff in levying writ of execution upon stock, see *Voorhis v. Terhune*, 50 N. J. Law, 147.

143. Non-resident officer to return statement and certificate, &c. Penalty for failure, &c.

That the non-resident clerk, cashier, or other officer in such company, to whom notice in writing is sent, as prescribed in the preceding section, shall thereupon send forthwith, by mail or otherwise, to the officer having such writ, a statement of the time when he received such notice, and a certificate of the number of shares held by the defendant in such company at the time of the receipt by him of such notice, not actually transferred on the books of said company; and the said sheriff or other officer shall on receipt by him of such certificate, insert the number of such shares in the inventory attached to said writ; and if such clerk, cashier, or other officer in such company, neglect to send such certificate, as aforesaid, or if he shall wilfully send a false certificate, he shall be liable to the

plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him; but the neglect to send, or miscarriage of such certificate, shall not impair the validity of the levy upon the stock.

(Id., §7.)

ANNUAL STATE FRANCHISE TAX

LAWS OF 1884, CHAPTER 159.

Being "An Act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," approved April 18, 1884, including the amendments and supplements to the end of the legislative session of 1909.

150.* State taxation of business corporations; report to state board of assessors.

All corporations incorporated under the laws of this state, other than those which are subject to the payment of a state franchise tax assessed upon the basis of gross receipts, shall make annual return to the State Board of Assessors on or before the first Tuesday of May in each year, and shall state therein the amount of the capital stock of such corporation issued and outstanding on the first day of January preceding the making of said return, together with such other information as may be required by said board to carry out the provisions of this act, and shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three mil-

* Arbitrary section number; see footnote, p. 247.

lion dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-twentieth of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; and any shares of stock either fully paid or partially paid in cash or by property purchased whether issued or otherwise shall be deemed to be shares of stock issued and outstanding until such shares or any substitute therefor shall have been retired and actually cancelled; provided, that this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations, or purely charitable or purely educational associations not conducted for profit, or manufacturing or mining corporations at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state, and which mining or manufacturing corporations shall have stated in the annual return to the State Board of Assessors where the mine or manufacturing establishment of such corporation or corporations is or are located, the character of the ores mined or the goods manufactured, the total amount of its capital stock embarked in the business of mining or manufacturing and the amount of capital stock actually employed in New Jersey in carrying on such mining or manufacturing business. If any manufacturing or mining company carrying on business in this state shall have less than fifty per centum of its capital stock, issued and outstanding, invested in business carried on within this state, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this

state, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.

(Sections 1, 2 and 4 of the Act of April 18, 1884; P. L. 1884, pp. 232, 233, 234; as amended by P. L. 1891, p. 150; P. L. 1892, pp. 136, 137; P. L. 1901, p. 31; P. L. 1906, p. 31.)

This act is in effect an amendment of Section 4 of "An Act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," approved April 18, 1884.

The purpose of the act is to correct a practical defect in the Corporation Tax Act of 1884. That act requires business corporations to report annually to the State Board of Assessors, but does not definitely fix the time for making the report, or the time as of which the report shall be made. It was the practice of the State Board of Assessors to require such corporations to make their reports on or before the first Tuesday of May, stating the amount of capital stock issued and outstanding on the first day of January preceding. In December, 1900, the Supreme Court, in the case of *Brewing Improvement Company v. Assessors*, 65 N. J. Law, 466, decided that the 18th day of April in each year was the date on which the capital stock was to form the basis for computing the annual tax, the Tax Act having taken effect on the 18th day of April, 1884. The State Board of Assessors then secured the passage of this act, which gives companies more time for making their reports, viz., from the first day of January to the first Tuesday of May.

This act also requires all manufacturing corporations to make annual reports, showing that they are entitled to exemption. The Supreme Court, in *Newark Brass Works v. Assessors*, 63 N. J. Law, 500, had held that such companies were not required to make such reports.

The jurisdiction of the State Board of Assessors to assess companies who have failed or refused to make a return is limited to the ascertainment of and making an assessment upon the capital stock issued and outstanding. The remedy of the company for excessive assessments is by writ of certiorari. *Trenton Heat & Power Co. v. Assessors*, 73 N. J. Law, 370. Nor are such companies precluded by failure to file their returns from having their assessments reviewed and exemptions ascertained by the courts. *Newark Brass Works v. Assessors*, *supra*; *New Jersey Zinc Co. v. Hancock*, Id., 506; *People's Investment Co. v. Assessors*, 66 N. J. Law, 175.

See *Hardin v. Morgan*, 70 N. J. Law, 484; *aff'd* 71 Id., 342; *King v. American Electric Vehicle Co.*, 70 N. J. Eq., 568.

Application of the act.

“The scheme of this particular taxing act (Act of April 18, 1884) seems to be to impose taxes on three classes of corporations—certain specified corporations doing business in the state wherever chartered, those not doing business in this state, but holding their charters under state authority, and a class of unspecified corporations, which must be few in number, holding charters under and performing their functions in this state.

“In the former class different provisions for taxation as amongst themselves are adopted, and in the second and third classes named a franchise tax is imposed based upon the amount of their capital stock.” *Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq., 270.

As to the first class, both domestic and foreign corporations are included. *Pipe Line Co. v. Berry*, 52 N. J. Law, 308; *aff'd* 53 Id., 212.

Where a corporation merely contracts with another corporation for the manufacture and sale of machinery, the control of the business being entirely in the hands of the latter, it is not entitled to the exemption from the state franchise tax allowed to corporations whose capital stock to the extent of 50 per cent. is invested in manufactures within the state. *Buffalo Refrigerating Machine Co. v. Assessors*, 72 N. J. Law, 127; distinguishing *Phonograph Co. v. Assessors*, 54 N. J. Law, 430, in which the Phonograph Company controlled the manufacture of the articles.

In *re Faure Electric Light Co.*, 43 N. J. Eq., 411, it is held that, by this act, the Legislature did not intend to assess the mere right or franchise independently of the business.

Nature of the tax.

The tax imposed by this act is a license or franchise tax. It is not a tax on property and this section is not a violation of the clause of the state constitution which provides that “property shall be assessed for taxes under general rules, and by uniform rules, according to its true value.” *Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq., 270; *Const.*, Art. IV, §7, Par. 12. The Act of 1866 taxing property has not been superseded by this Act. Taxation under this act was designed to provide revenue for the state. Taxation under the Act of 1866 is a local tax. *Pipe Line Co. v. Berry*, 52 N. J. Law, 308; *aff'd* 53 Id., 212.

The tax imposed by the Act of 1884 is not a property tax, and is not subject to diminution because some of the corporation's capital is invested in letters patent of the United States. *Marsden Co. v. Assessors*, 61 N. J. Law, 461.

Such tax may be exacted by the state from which the right is derived, without reference to the nature of the business the corporation may be authorized to carry on, and is constitutional even as against a

domestic corporation created for the purpose of engaging in commerce with an adjoining state. The right of corporate existence is in itself indivisible, and the fee therefor must necessarily be an entirety, no matter where the property of the company is situated or how its capital is invested or employed. *State v. Assessors*, 16 N. J. L. J., 210. See also *Honduras Commercial Co. v. Assessors*, 54 N. J. Law, 278.

Basis of the tax.

The tax is computed upon the basis of the capital stock issued and outstanding, and it is held that stock is issued when the company has received and accepted subscriptions for the same, whether paid for or not. *American Pig Iron Storage Co. v. Assessors*, 56 N. J. Law, 389.

In *Storage Battery Co. v. Assessors*, 60 N. J. Law, 66, at page 69, affirmed 61 Id., 289, it was held that the basis of the tax was "the amount of capital stock issued and outstanding as a fixed factor, without regard to the purpose for which the capital stock was issued or whether it was issued for value or not."

"Stock once issued is and remains outstanding until retired and cancelled by the method provided by statute for the retirement and cancellation of capital stock"; and the transfer of stock to the treasury of the company as "treasury stock" does not remove such stock from the category of stock "issued and outstanding" within the purview of the Act. *Knickerbocker Importation Co. v. Assessors*, 74 N. J. Law, 583, at page 590.

"The words 'retirement' and 'cancellation' must be interpreted to mean permanent retirement and actual cancellation in the method and in full compliance with the provisions of the statute." Id.

Continuance of tax.

As long as the corporation exists it is liable for this franchise tax. It continues after a receiver is appointed and until the dissolution of the company. *Kirkpatrick v. Assessors*, 57 N. J. Law, 53.

The question whether an insolvent corporation whose affairs have been placed in the hands of a receiver, is subject to the payment of the franchise tax, has been settled by the decision of the Court of Errors and Appeals In re *United States Car Co.*, 60 N. J. Eq., 514, decided July 7, 1899. The court said: "The sole test in determining its liability to comply with those conditions [the provisions of the statute imposing the license fee] so long as they remain unrevoked, is the existence or non-existence of the corporation"; and it was accordingly held that the license fee assessed against the corporation was entitled to priority in payment out of the assets in the hands of the receiver, notwithstanding the fact that such license fee was imposed upon the corporation subsequent to the appointment of the receiver, and that the latter had not since his appointment exercised any of the corporate franchises.

The fact that the company has ceased to do business and to use its franchise, even though compelled to do so by the decree of a court enjoining the company from using certain patents which form the basis of the company's business, does not relieve it from the duty to pay the franchise tax. If it wishes to withdraw from active business, it must, to escape taxation, take proceedings to dissolve in the manner prescribed by law. In case of failure to pay such tax, the act provides that proceedings may be instituted by the Attorney-General to enjoin the company from exercising its franchises until the tax is paid. *Edison Phonograph Co. v. Assessors*, 55 N. J. Law, 55; *Electro-Pneumatic Transit Co.'s Case*, 51 N. J. Eq., 71.

The tax is a preferred debt against the assets in the hands of a receiver of an insolvent corporation. *Conklin v. U. S. Shipbuilding Co.*, 148 Fed. Rep., 129.

Exemptions from payment of franchise taxes.

A manufacturing corporation cannot claim the exemption until it has actually located its factory within the state and begun work under its charter, and it can claim exemption only while it is actually engaged in the business of manufacturing within the state. *Norton Construction Co. v. Assessors*, 53 N. J. Law, 564. To determine whether the company is within the exception reference must be had to its actual business, for the business in which the capital of a company is invested, and not the objects for which the company was formed, as expressed in the certificate of incorporation, must be regarded. *Edison Phonograph Co. v. Assessors*, 55 N. J. Law, 55. It is not necessary that the manufacturing should be carried on directly by the company. It may, it seems, contract with manufacturing agencies to manufacture for it, and if the manufacturing is actually carried on within the state, the conditions of the statute are met. *Phonograph Co. v. Assessors*, 54 N. J. Law, 430.

Where the capital stock of a manufacturing company is invested in patents under which it manufactures, it is entitled to exemption for its capital invested in such patents as are necessary to carry on its manufacturing within the state of New Jersey. It must, however, actually manufacture within the state under the patents. *Phonograph Co. v. Assessors*, above cited. In the case of *Edison United Phonograph Co. v. Assessors*, 57 N. J. Law, 520, the total capital was \$1,000,000, of which \$999,000 was issued for patent rights. The proof was that those rights included the right to manufacture speaking machines in New Jersey, Great Britain, France and some other foreign countries, and to sell and use such machines only in foreign lands beyond the limits of the United States and Canada. The company had no factory of its own in New Jersey, although it did manufacture through another company located in New Jersey. But there was no proof as to the amount of capital which was invested in the right to manufacture

within New Jersey, and the court said that so far as the capital was used in acquiring the right to manufacture elsewhere, it was not invested in manufacturing within this State. On the facts presented the court refused to infer that fifty per cent. was invested in the right to manufacture in New Jersey, and as no deduction was asked for on account of the capital actually invested in manufacturing within the state, the taxes were affirmed with costs.

An electric company is not entitled to exemption as a manufacturing corporation under Section 4 of the Act of 1892, on a showing that it has a plant in the state and one outside, to which the products of the former are sent for finishing, and that such product costs more than 50 per cent. of the finished product, and a claim that the cost of patents owned by it and covering the processes conducted at the home branch represents the greater part of the capital, where it also appears that the New Jersey plant cost less than the foreign plant, and where it is not shown how much of the stock represented by patents is represented by foreign and domestic patents, respectively. *Storage Battery Co. v. Assessors*, 60 N. J. Law, 66; *aff'd* 61 N. J. Law, 289.

The right to exemption being a matter of grace which the statute confers, it is essential that the provisions of the statute be strictly followed, otherwise the exemption is lost. *Hardin v. Morgan*, 70 N. J. Law, 484; *aff'd* 71 Id., 342.

The statute does not mean that companies should be exempt which have no plant and do not employ capital in manufacturing in this state. *Alton Mach. Co. v. Assessors*, 69 Atl. Rep., 451.

When the only asset of a corporation is a contract with a second corporation, and the second corporation entirely controls the business and assumes the risk of manufacture, the exemption from the franchise tax is not allowed. *Buffalo Refrig. Mach. Co. v. Assessors*, 72 N. J. Law, 127; distinguishing *Phonograph Co. v. Assessors*, 54 N. J. Law, 430.

Exemption from the tax is a favor, and to be secured must be applied for in the manner designated in the statute. *Union Paper Co. v. Assessors*, 73 N. J. Law, 374.

See also *King v. American Electric Vehicle Co.*, 70 N. J. Eq., 568, where no report was filed and exemption was not allowed.

The proceeds of the capital stock sold under the statute for cash or for property are the invested capital of the company, within the meaning of Section 150, and this includes patent rights. *American Mutoscope Co. v. Assessors*, 70 N. J. Law, 172.

What is manufacturing within the meaning of the act.

In construing the statute the court will give the word "manufacturing" its popular sense. Therefore, it was held that printing and publishing a newspaper is not manufacturing, but that where a company is incorporated "to conduct and prosecute the business of book

binding and job printing, engraving, electrotyping and lithographing," and its capital is invested in the prosecution of that business, and it manufactures on orders only, it is a manufacturing company within the meaning of the statute.

Evening Journal Association v. Assessors, 47 N. J. Law, 36; *Printing Co. v. Assessors*, 51 N. J. Law, 75.

To entitle a corporation to the exemption from the franchise tax it must appear that at least 50 per cent. of its capital is actually invested in manufacturing or mining carried on in this state, and simply having a place leased for the purpose of carrying on a manufacturing business, but at which no business is carried on, is not a fulfillment of the statute. *Halsey Electric Generator Co. v. Assessors*, 74 N. J. Law, 321.

A company which merely maintains an office here for preserving records of transactions and operates plants elsewhere is not within the meaning of the statute. *American Glucose Company v. State*, 43 N. J. Eq., 280.

The Society for the Establishing of Useful Manufactures is a manufacturing corporation. *State v. Society, etc.*, 43 N. J. Eq., 410.

So far as the capital stock is used to acquire the right to manufacture elsewhere, it is not invested in manufacturing in this state. *Storage Battery Co. v. Assessors*, 60 N. J. Law, 66; *aff'd* 61 Id., 289.

151. Penalties for false statement, or failure to make statement.

If any officer of any company required by this act to make a return, shall in such return make a false statement, he shall be deemed guilty of perjury; if any such company shall neglect or refuse to make such return within the time limited as aforesaid, the state board of assessors shall ascertain and fix the amount of the annual license fee or franchise tax and the basis upon which the same is determined, in such manner as may be deemed by them most practicable, and the amount fixed by them shall stand as such basis of taxation under this act.

(Section 3 of the Act of April 18, 1884; P. L. 1884, p. 233; as amended by P. L. 1892, p. 137.)

In *People's Investment Co. v. Assessors*, 66 N. J. Law, 175, the Supreme Court held that no penalty is provided for failure to make

the return required by the act, and, in the absence of such return, the franchise tax cannot be ascertained by using capital stock authorized as a basis for calculation.

In *Trenton Heat & Power Co. v. Assessors*, 73 N. J. Law, 370, the Supreme Court, following the case of *People's Investment Co. v. Assessors*, *supra*, said: "The jurisdiction of the state board to assess franchise taxes upon companies not making a return is limited to the ascertainment of, and the making of an assessment upon, the capital stock of such companies issued and outstanding. They must ascertain as best they can what amount that is, and, if they assess excessively, the company must pay the tax or be at the expense of correcting it through the certiorari power of this court."

152. Duties and powers of state board of assessors.

The state board of assessors shall certify and report to the comptroller of the state, on or before the first Monday of June in each year, a statement of the basis of the annual license fee or franchise tax as returned by each company to, or ascertained by, the said board, and the amount of tax due thereon respectively, at the rates fixed by this act; such tax shall thereupon become due and payable, and it shall be the duty of the state treasurer to receive the same; if the tax of any company remains unpaid on the first day of July, after the same becomes due, the same shall thenceforth bear interest at the rate of one per centum for each month until paid; the state board of assessors shall have power to require of any corporation subject to tax under this act, such information or reports touching the affairs of such company as may be necessary to carry out the provisions of this act; and may require the production of the books of such company, and may swear and examine witnesses in relation thereto; the comptroller shall receive as compensation for his services under this act, and under the act entitled "An act for the taxation of railroad and canal property," approved April tenth, one thousand eight hundred

and eighty-four, the sum of five hundred dollars annually.

(Section 5 of the Act of April 18, 1884; P. L. 1884, p. 235; as amended by P. L. 1892, p. 140.)

The finding of the State Board of Assessors is reviewable in the bankruptcy court on questions of amount or legality of taxes entitled to priority of payment. *State v. Anderson*, 203 U. S. 483.

In cases of dissolution Section 56 provides for the appointment of a receiver who shall have power to prosecute and defend in the name of the corporation; and Section 54 provides that the directors shall be trustees with authority to sue in the name of the corporation. It is clear, therefore, that the corporate entity is deemed to continue after dissolution for purposes of suing and being sued. Section 153 provides that the franchise tax when determined shall be a debt due to the state. Therefore, franchise taxes due from a corporation bear interest at twelve per cent. until paid, even after dissolution of the corporation by executive proclamation. *In re Senora & Sinaloa Irr. Co.*, 76 Atl. Rep., 307.

153. Tax is a debt; how collected; preferred in case of insolvency.

Such tax, when determined, shall be a debt due from such company to the state, for which an action at law may be maintained after the same shall have been in arrears for the period of one month; such tax shall also be a preferred debt in case of insolvency.

(Section 6 of the Act of April 18, 1884; P. L. 1884, p. 236.)

The franchise tax is a preferred debt which must be paid in advance of dividends to creditors under section 64a of the Bankruptcy Act. (U. S. Comp. Stat., 1901, 3447), and is "legally due and owing" under the act though not collectible until after the corporation is declared a bankrupt. *State v. Anderson*, 203 U. S., 483.

The franchise tax is entitled to priority over liabilities incurred by the receiver in carrying on the business of the insolvent corporation, but not to priority over the receiver's allowances and his expenses in winding up the company. *Chesapeake & Ohio R. R. Co. v. Atlantic Transportation Co.*, 62 N. J. Eq., 751.

Until a corporation shall be dissolved the franchise tax remains a valid preferred debt. *Conklin v. U. S. Shipbuilding Co.*, 148 Fed. Rep., 129.

The franchise tax is entitled to priority in the payment out of the assets in the hands of a receiver, even if the tax is imposed subsequent to the appointment of the receiver, and if the receiver has not exercised any of the corporate franchises. *In re U. S. Car Co.*, 60 N. J. Eq., 514.

The tax provided for under this section, being an "arbitrary imposition laid upon a corporation without regard to the value of its property or its franchises," will not be enforced in a foreign jurisdiction and given priority of payment over the claims of bona fide local creditors, where the business situs and all the property of a New Jersey corporation are located in another state and the insolvent corporation is being wound up in that state. *Franklin Trust Co. v. State*, 181 Fed. Rep., 769.

This decision is in accord with the view expressed in *Ballou v. Flour Milling Co.*, 67 N. J. Eq., 188, where the court said that the imposition of such a tax would not be given extraterritorial effect.

A fee or franchise tax has no legal status in a foreign jurisdiction unless supported by statute or special equities. But it appears that this rule does not apply to bankruptcy proceedings. *New Jersey v. Anderson*, 203 U. S., 483.

154. Injunction against company in arrears for three months.

In addition to other remedies for the collection of such tax, it shall be lawful for the attorney-general, either of his own motion or upon the request of the state comptroller, whenever any tax due under this act, from any company, shall have remained in arrears for a period of three months after the same shall have become payable, to apply to the court of chancery, by petition in the name of the state, on five days' notice to such corporation, which notice may be served in such manner as the chancellor may direct, for an injunction to restrain such corporation from the exercise of any franchise, or the transaction of any business within this state until the payment of such tax and interest due thereon, and the costs of such application, to be fixed by the chancellor; the said court is hereby authorized to grant such injunction, if a proper case

appear, and upon the granting any service of such injunction, it shall not be lawful for such company thereafter to exercise any franchise or transact any business in this state until such injunction be dissolved.

- (Section 7 of the Act of April 18, 1884; P. L. 1884, p. 236.)

When a "proper case" is presented, the Court of Chancery has no discretion, but must issue the injunction. *Electro-Pneumatic Transit Co.'s Case*, 51 N. J. Eq., 71.

See *Jewett v. Bauman*, 27 N. J. Eq., 171; *In re Faure Elec. Light, &c., Co.*, 43 Id., 411; *In re New York File & Sharpening Co., Id.*, 413; *Macaulay v. White Sewing Machine Co.*, 9 Fed. Rep., 698; *Cary Mfg. Co. v. Acme Flexible Clasp Co.*, 108 Fed. Rep., 873; s. c. 187 U. S., 427.

155. For failure for two years to pay state tax charter void, unless governor gives further time.

If any corporation created under any act of this state shall for two consecutive years neglect or refuse to pay the state any tax which has been or shall be assessed against it under any law of this state and made payable into the state treasury, the charter of such corporation shall be declared void as in section two of this act provided, unless the Governor shall, for good cause shown to him, give further time for the payment of such tax, in which case a certificate thereof shall be filed by the Governor in the office of the comptroller, stating the reasons therefor.

(Section 1 of the Supplement of April 21, 1896; P. L. 1896, p. 319; as amended by P. L. 1905, p. 508, Section 1.)

A company whose charter has been proclaimed by the Governor under this act is within the provisions of Sections 53-60 of the Corporation Act regulating the winding up of corporations. *American Surety Co. v. Great White Spirit Co.*, 58 N. J. Eq., 526.

The tax is imposed solely as a condition of continued existence and is to be levied without regard to value of property or the exercise of the franchise. *In re United States Car Co.*, 60 N. J. Eq., 514.

The receiver of an insolvent corporation must pay the tax when he has failed to make the proper return even though he has con-

verted all of the property of the company into cash and has transacted no business. *King v. American Vehicle Co.*, 70 N. J. Eq., 568. See also *Duryea v. Am. Wood Working Co.*, 133 Fed. Rep., 329.

156. Comptroller to report list of delinquents. Governor to issue proclamation declaring repeal of charter.

On or before the first Monday in January in each year the comptroller shall report to the Governor a list of all corporations which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them under any law of this state as above, and the Governor shall forthwith issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed, and all powers conferred by law upon such corporations shall thereafter be deemed inoperative and void.

(Section 2 of the Supplement of April 21, 1896; P. L. 1896, p. 319; as amended by P. L. 1900, p. 319; P. L. 1901, p. 221; P. L. 1905, p. 509, Section 2.)

This section does not prohibit a corporation from winding up its affairs and does not prevent an adjudication in bankruptcy. In re *Munger Vehicle Tire Co.*, 159 Fed. Rep., 901.

157. Proclamation to be filed and published.

The proclamation of the Governor shall be filed in the office of the secretary of state, and published in such newspapers and for such length of time as the Governor shall designate.

(Section 3 of the Supplement of April 21, 1896; P. L. 1896, p. 319; as amended by P. L. 1905, p. 509, Section 3.)

158. Penalty for exercising powers under charter after proclamation.

Any person or persons who shall exercise or attempt to exercise any powers under the charter of

any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both, in the discretion of the court.

(Section 4 of the Supplement of April 21, 1896; P. L. 1896, p. 319; as amended by P. L. 1905, p. 509, Section 4.)

159. Attorney-general may proceed against corporations in arrears; receiver may be appointed.

After any corporation of this state has failed and neglected for the space of two consecutive years to pay the taxes imposed upon it by law, and the comptroller of this state shall have reported such corporation to the Governor of this state, as provided in this act, then it shall be lawful for the attorney-general of this state to proceed against said corporation in the court of chancery of this state for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the State of New Jersey, and shall enter a final decree for the amount so ascertained, and thereupon a fieri facias or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on fieri facias shall be found within the said State of New Jersey, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustee or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of, or license under any

patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court. And if the said corporation shall neglect or refuse, within ten days from and after the serving of notice of such decree, to assign and transfer the same to such receiver or trustee for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under fieri facias of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings.

(Section 5 of the Supplement of April 21, 1896; P. L. 1896, p. 320; as amended by P. L. 1905, p. 509, Section 5.)

160. Governor may correct mistake when corporation inadvertently reported.

Whenever it is established to the satisfaction of the Governor that any corporation named in said

proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the Governor by the comptroller as refusing or neglecting to pay the same as aforesaid, the Governor is hereby authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the secretary of state.

(Section 6 of the Supplement of April 21, 1896; P. L. 1896, p. 321; as amended by P. L. 1905, p. 510, Section 6.)

161. Governor, with advice of attorney-general, may renew void charters.

If the charter of any corporation organized under any law of this state shall hereafter become or shall have heretofore become inoperative or void by proclamation of the Governor or by operation of law, for non-payment of taxes, the Governor, by and with the advice of the attorney-general, may, upon payment by said corporation to the secretary of state of such sum in lieu of taxes and penalties as to them may seem reasonable, but in no case to be less than the fees required as upon the filing of the original certificate of incorporation, permit such corporation to be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the secretary of state shall issue his certificate entitling such corporation to continue its said business and its said franchises; provided, however, that the provisions of this section shall in nowise apply to any gas, electric light, telephone, telegraph, water, pipe-line, railroad, street railway company, or other corporation having the right to use the public streets, or to take and condemn lands in this state; and provided further, that nothing in this section contained shall relieve any such corpora-

tion from the penalty of forfeiture of its franchises in case of failure to pay future taxes imposed under the act to which this is a supplement or under any law of this state.

(Supplement of March 25, 1898; P. L. 1898, p. 182; as amended by P. L. 1904, p. 382; P. L. 1905, p. 511, Section 7.)

162. Proceedings for readjustment of excessive or unjust assessment.

The officers of any corporation who shall consider the tax levied under the provisions of an act to which this act is a further supplement, excessive or otherwise unjust, may make application to the state board of assessors for a review of the assessment and a readjustment of the tax; provided, there be filed with the said board within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken and the reasons why the tax is considered excessive or unjust; the state board of assessors shall thereupon proceed to investigate the contentions raised by the said petition of appeal; and for the purpose of such hearing, the officers of said corporation may be summoned to appear before said board, either in person or by attorney, and questioned as to the statements set forth in the said petition of appeal; if, in the opinion of a majority of the board, it shall appear that the tax so levied as aforesaid is excessive or unjust, they shall thereupon require the officers of the corporation to file with the board a corrected return, and upon said corrected return the assessment shall be adjusted and the tax reduced or amended as in the opinion of the board shall seem proper.

(Section 1 of Supplement of April 8, 1897; P. L. 1897, p. 178.)

In *People's Investment Co. v. Assessors*, 66 N. J. Law, 175,

the Supreme Court held that the method of review prescribed by this act was not exclusive; that certiorari would still lie.

The return made by a corporation to the state board of assessors under the corporation tax act is not conclusive against the corporation. A mistake as to the issued and outstanding stock may be shown and the tax reduced. *Arimex Consolidated Copper Co. v. Assessors*, 69 N. J. Law, 121.

Failure for three or more years to apply for the vacation of an assessment is such laches as will bar a right to relief on certiorari. *Union Waxed & Parchment Paper Co. v. Assessors*, 73 N. J. Law, 374.

See *Trenton Heat & Power Co. v. Assessors*, 73 N. J. Law, 370; *Yellow Pine Co. v. Assessors*, 72 N. J. Law, 182.

163. Right of appeal waived after three months.

If the petition of appeal shall not be filed within three months from the date of assessment as aforesaid, the right to appeal to the state board shall be considered and treated as having been waived and the amount of tax levied shall be payable and collected as other taxes levied by said board.

(Section 2 of Supplement of April 8, 1897; P. L. 1897, p. 178.)

164. Taxes illegally assessed to be refunded.

When any corporation upon which taxes have been or shall be levied under the provisions of the act to which this is a supplement shall afterwards be found by the state board of assessors to be not liable under the said act for such tax, it shall be the duty of the said board to report and certify to the comptroller of the treasury the fact that such corporation has been found to be exempt from the tax imposed by the said act, and to cancel and declare null and void any taxes which may have been or shall be imposed upon such exempted corporation, and if any corporation has paid or shall pay the tax so improperly levied the comptroller of the treasury shall be and is hereby authorized upon receipt of such certificate to draw his war-

rant upon the state treasurer in favor of the proper officer of such corporation for any and all of such taxes which have been or shall be paid into the state treasury.

(Supplement of March 1, 1888; P. L. 1888, p. 118.)

“We understand this supplement to be applicable to cases in which this court, on certiorari, adjudges the tax imposed to be unlawful in whole or in part, and to enable the court in such cases, by proper proceedings against the state board of assessors and the financial officers of the state, to compel the restoration of the unlawful tax paid. Thus the court can administer complete justice between the state and the corporation, without restraining the collection of the tax.” *Singer Sewing Machine Co. v. Assessors*, 54 N. J. Law, 90.

165. Erroneous assessments; court may fix amount.

That no tax, assessment or water rate, imposed or levied in this state, shall be set aside or reversed in any court of law or equity in any action, suit or proceeding for any irregularity or defect in form, or illegality in assessing, laying or levying any such tax, assessment or rate, or in the proceeding for collecting the same, if the person against whom, or the property upon which such tax, assessment or rate is assessed or laid is, in fact, liable to taxation, or assessment or imposition of such water rate, in respect of the purposes for which such tax, assessment or rate is levied, assessed or laid; and the court in which any action, suit or proceeding is or shall be pending to review any such tax, assessment or water rate is required to amend all irregularities, or errors, or defects, and is empowered, if need be, to ascertain and determine for what sum such person or property was legally liable to taxation, or assessment, or water rate, and by order or decree to fix the amount thereof; and the sum so fixed shall be the amount of tax, assessment or water rate

for which such person or property shall be liable, and the same shall be and remain a first lien or charge upon the property and persons, and collectible in the manner provided by law, the same as if such tax, assessment or water rate had been legally levied, assessed or imposed in the first instance by the city, town, township, commission, board or other authority attempting to make, impose or levy the same; it shall be the duty of the court to make a proper levy, imposition or assessment in all cases in which there may lawfully be an assessment, imposition or levy; and such court is hereby given full and ample authority to make a lawful levy, assessment or imposition.

(Act of March 23, 1881; Gen. Stat., p. 3404.)

ACKNOWLEDGMENT AND RECORDING OF DEEDS, &c.

Provisions of "An Act respecting conveyances (Revision of 1898)," P. L. 1898, p. 670.

170.* What instruments may be acknowledged.

All deeds or instruments of the nature or description following, of or affecting the title to any lands, tenements or hereditaments, lying and being in this state, or any interest therein, may be acknowledged or proved and then recorded in the office of the clerk of the court of common pleas of the county where the said lands, tenements or hereditaments are situated, that is to say: conveyances, releases, declarations of trust, mortgages, defeasible deeds or other conveyances in nature of a mortgage, releases or deeds in which the intention to operate as releases from the lien and effect of any mortgage or judgment is plainly manifested, assignments and discharges or satisfaction pieces of mortgages, assignments of judgments, letters of attorney for any sale, conveyance, assurance, acquittance or release, leases for life or any term not less than two years, or any assignments thereof absolute, or by way of mortgage, or security, agreements for sale, or written consents of any person to the execution by an executor, administrator with the will annexed, or trustee, of a power for sale, conveyance, ac-

* Arbitrary section number; see footnote, p. 247.

quittance, or release, or writings to declare or direct any use or trust of real estate, or which though made for some other purpose, are yet by the terms of any recordable deed or will which refers to such writings, made to operate as such declarations or directions, and all other instruments that may have been heretofore or may be hereafter directed by any statute to be acknowledged or proved and recorded, and also in the office of the clerk of the court of common pleas of the county in which the goods, chattels and personal property lie, unless otherwise directed in this or any other act, the following deeds and instruments not of or affecting the title to land, but of or affecting goods, chattels and personal property in this state, that is to say: chattel mortgages, assignments, releases and discharges thereof, contracts for the conditional sale of goods and chattels, deeds of personal property to literary, benevolent, religious or charitable institutions upon particular trusts therein specified or otherwise.

(§21.)

. Original and amended certificates of incorporation are required to be proved or acknowledged as required for deeds of real estate. General Corporation Act, ante, Sections 9, 26a, 27 and 134.

Acknowledgment by corporation.

There has been some controversy in New Jersey as to whether a corporation could acknowledge a deed, or whether the execution had to be proved by a subscribing witness. The Court of Errors and Appeals in 1890 decided that the deed of a corporation may be lawfully acknowledged by the representative of the corporation, having authority to execute the deed in its behalf. *Hopper v. Lovejoy*, 47 N. J. Eq., 573.

The usual practice, however, is to prove the execution of the deed by a subscribing witness. An affidavit proving the signature of the president of the corporation to a conditional contract of sale, and the affixing of the corporate seal, were held to be a sufficient compliance with P. L. 1895, p. 158, G. S., p. 2706, requiring such contracts to be "acknowledged." *General Electric Co. v. Transit Equipment Co.*, 57 N. J. Eq., 460.

171. Acknowledgments taken in this state.

If any deed or instrument of the nature or description set forth in the twenty-first section of this act heretofore made and executed, or hereafter to be made and executed, shall have been or shall be acknowledged by the party who shall have executed or shall execute it, such party then having happened or happening to be in this state, whether residing here or elsewhere before the chancellor, one of the justices of the supreme court, one of the masters in chancery of this state, one of the attorneys-at-law of this state, one of the judges of the court of common pleas of any county in this state, one of the commissioners of deeds appointed for any county in this state, a clerk of the court of common pleas of any county, a deputy county clerk, a surrogate or deputy surrogate of any county or a register of deeds of any county in this state, whether such officer was or is appointed for, or whether he was or is in the said county where such lands, tenements or hereditaments are situate, or where such acknowledgment was or is taken or not, such officer having first made known the contents thereof to such party making such acknowledgment, and being also satisfied that such party is the grantor in such deed or instrument, of all which the said officer shall make his certificate on, under or annexed to said deed or instrument, or if it shall have been or shall be proved by one or more of the subscribing witnesses to it, such witness or witnesses then having happened or happening to be anywhere in this state, whether residing here or elsewhere, that such party signed, sealed and delivered it as his voluntary act and deed, before any one of the above-named officers then having been or being anywhere in this state, and if a certificate of such proof, signed by such officer, shall be written upon, or

under or be annexed to such deed or instrument, then every such deed or instrument shall be received in evidence in any court of this state as if the same were then and there produced and proved.

§22, as amended by Chap. 138. Law 1901, P. L. 1901, p. 295, and further amended by Chap. 247, Laws 1906, P. L. 1906, p. 524.

For forms of acknowledgment and proof by subscribing witness see Forms, p. 350.

172. Acknowledgments taken out of this state, but within the United States.

If the party who shall have executed or who shall execute any such deed or instrument of the description or nature above set forth in the twenty-first section of this act, or the witnesses thereto shall have happened or shall happen, to be in some other state in the union or territory thereof, or in the District of Columbia, whether such party or witnesses resided or reside in this state, or in such state, territory, or district, or elsewhere, then such acknowledgment or proof as is above prescribed, made before and certified by the chief justice of the United States, or any associate justice of the supreme court of the United States, or any master in chancery of this state, or any attorney-at-law of this state, or any circuit or district judge of the United States, or any judge or justice of the supreme or the superior courts, or the chancellor, of any state in the Union, or territory thereof, or District of Columbia, or any foreign commissioner of deeds for New Jersey, duly certified, under the official seal of such commissioner, or before and by any mayor or other chief magistrate of any city, borough, or corporation in such state, territory, or district, duly certified under the seal of such city, borough, or corporation, of which he was or is mayor or chief magis-

trate, such circuit or district judge, judge or justice of such supreme or superior court, or chancellor of such state, foreign commissioner of deeds, mayor or other chief magistrate then having been or being anywhere within the circuit, district, state, territory, district, city, borough, or corporation, for which he was or is appointed, or before and by any judge of any court of common pleas of such state, territory, or district, such judge then having been or being within the county or district in and for which he was or is such judge, duly certified that he was or is such judge under the great seal of such state, or under the seal of the county court of the county or district in which it is made and in and for which he was or is such judge, or before and by any officer in any such state of the Union, territory thereof, or District of Columbia, then residing, and being anywhere in such state, territory or district, authorized at the time of such proof or acknowledgment by the laws of such state, territory, or district, to take the proofs and acknowledgments of deeds or conveyances of lands, tenements, or hereditaments, lying and being in such state, territory, or district; provided, in such case the certificate of acknowledgment or proof shall be accompanied by a certificate under the great seal of such state, territory, or district, or under the seal of some court of record of the county in which it was or shall be made, that the officer before whom such acknowledgment or proof was or shall be made was, at the time of the taking of said proof or acknowledgment, authorized by the laws of such state, territory, or district, to take the acknowledgments and proofs of deeds or conveyances for lands, tenements, or hereditaments in such state, territory, or district, shall be as good and effectual as if such acknowledgment or proof had been made within

this state before the chancellor thereof and had been certified by him.

§23, as amended by Chap. 250, Laws of 1906, P. L. 1906, p. 528.

For form of certificate of county clerk or other officer authenticating notary's signature, see p. 45.

173. Acknowledgments taken out of the United States.

If the party who shall have executed or who shall execute any such deed or instrument of the description or nature above set forth in the twenty-first section of this act, or the witnesses thereto, shall have happened or shall happen to be in any foreign kingdom, state, nation, or colony, whether such party or witnesses resided or reside in this state, or in such foreign kingdom, state, nation, or colony, or elsewhere, then such acknowledgment or proof as is above prescribed, made before and certified by any master in chancery of New Jersey, or any public ambassador, minister, consul, vice-consul, consular agent, chargé d'affaires or other representative of the United States for the time being, to or at any such foreign kingdom, state, nation, or colony, or before and by any court of law of such foreign kingdom, state, nation, or colony, or before and by any notary public, or mayor or other chief magistrate of and then having been, or being within, any city, borough, or corporation of such foreign kingdom, state, nation or colony, in which city, borough, or corporation such party or witnesses may have happened or may happen to be, certified in such cases by such court of law, notary public, mayor or chief magistrate in the manner in which such acts are usually authenticated by them, shall be as good and effectual as if such acknowledgment or proof had been made within this state before the chancellor thereof and had been certified by him.

(§24.)

174. Certain words explained.

Every section of this act referring expressly or impliedly to the "clerks of the courts of common pleas" shall be understood, read, and construed to refer as well to "registers of deeds and mortgages" in counties in which there are or shall be such officers,* as fully to all intents and purposes as if "registers of deeds and mortgages" had been expressly named therein, instead of "clerks of the courts of common pleas," "clerks" or "county clerks."

(§97.)

175. Acknowledgments heretofore taken by attorneys-at-law confirmed.

1. That all acknowledgments and proofs of deeds, mortgages and other writings and the certificates thereof taken or made since the twenty-second day of March, one thousand nine hundred and one, before or by any one of the attorneys-at-law licensed to practice in this State, are hereby confirmed and made valid and legal and effectual to the same extent that the same would have been valid and legal and effectual if such attorneys-at-law had been given full power and lawful authority to take such acknowledgments and proofs of deeds and mortgages and other writings, by virtue of an act entitled "An amendment to an act entitled 'An act respecting conveyances' (Revision of 1898) approved June fourteenth, one thousand eight hundred and ninety-eight," which amendment was approved March twenty-second, one thousand nine hundred and one.

2. That the record of any deed, mortgage or other writing acknowledged or certified as mentioned in

*Essex, Hudson and Camden, see G. S., pp. 2733-4.

the next preceding section is hereby made good and effectual in law as of the time such deed, mortgage or other writing was or shall be lodged for record, and the same or a certified copy thereof may be used and given in evidence, in the same manner and with like effect as if the said acknowledgment had been made before and certified by an officer then having full and lawful authority to take the same.

The foregoing is Chap. 212, P. L. 1906, p. 409.

REGISTRATION AND RECORDING OF MORTGAGES

180.* Mortgages to be registered.

That the clerk of the court of common pleas† of every county of this state shall, from time to time, provide fit books, well bound and lettered, for registering all mortgages and defeasible deeds in the nature of mortgages, of lands, tenements and hereditaments, lying and being within his county, in which shall be entered the names of the mortgagor and mortgagee, the date of the mortgage, the mortgage money and when payable, and the descriptions and boundaries of the lands, tenements and hereditaments mortgaged; that the said clerk shall, immediately on receiving the said mortgage, make the said entry or abstract in the register, and shall note in the margin, or at the foot of such abstract, the day of the month and the year, when the said mortgage was delivered to him or brought to his office to be recorded; to which books every person shall have access at proper seasons, and may search the same, paying the fees allowed by law.

(“An act concerning mortgages”; G. S., p. 2105, §17.)

181. May be recorded in full at request of mortgagee.

That it shall and may be lawful to record in full, in the books provided for the registry of mortgages, all

* Arbitrary section number.

†As to registering of mortgages in Essex, Hudson and Camden counties, see G. S., pp. 2733-4.

mortgages authorized to be registered by this act, upon the request of the mortgagee, and upon his paying therefor the same fees as are allowed by law for recording deeds; and when any mortgage is so recorded in full, the record of such mortgage, and a transcript of such record, duly certified by the clerk in whose office the record is kept, shall be received in evidence in any court of this state, in the same manner, and to the same effect, as the record, or a transcript of the record of deeds is now received.

(Id., §18.)

182. Mortgages must be acknowledged or proved.

That no mortgage, defeasible deed or other conveyance in nature of a mortgage, which has been made and not already acknowledged or proved according to law, or which shall be made, shall be entered in such register, unless the execution thereof shall be first acknowledged or proved and certified in the manner prescribed by the act entitled "An act respecting conveyances."

(Id., §20.)

183. Operation of unregistered mortgage.

That every deed of mortgage, or conveyance in nature of a mortgage, of or for any lands, tenements or hereditaments, which shall have been made and executed after the first day of January, in the year of our Lord one thousand eight hundred and twenty-one, or shall hereafter be made and executed, shall be void and of no effect against a subsequent judgment creditor, or bona fide purchaser, or mortgagee for a valuable consideration, not having notice thereof, unless such mortgage shall be acknowledged or proved according to law, and recorded or lodged for that pur-

pose with the clerk of the court of common pleas of the county in which such lands, tenements or hereditaments are situated, at or before the time of entering such judgment, or of recording or lodging with the clerk as aforesaid, the said mortgage or conveyance to such subsequent purchaser or mortgagee; provided, nevertheless, that such mortgage, as between the parties and their heirs, be valid and operative.

(Id., §22.)

184. Owners of lands in certain counties and cities may agree not to apply for tax reduction by reason of mortgage.

That hereafter it shall be lawful for the owners of lands situated in the counties of Hudson, Essex, Union, Bergen and Passaic, and in the cities of Trenton, New Brunswick and Camden, to agree for themselves and their heirs and assigns with the holder of any mortgage now in existence or hereafter to be made, which binds or may bind lands in said counties or cities, not to apply for any deduction, by reason of any mortgage, from the taxable value of such lands embraced in such mortgage.

(§1 of Supplement of April 17, 1876; G. S., p. 2113.)

185. Effect of violation of such agreement.

That in case any mortgagor or owner of lands, or the heirs or assigns of any mortgagor or owner of land situate in said counties and cities mentioned in section one, who shall have agreed not to claim any deduction from the taxable value of lands described in any mortgage, shall claim a deduction therefrom in violation of such agreement, that then and in that case said mortgage in said agreement described shall be-

come immediately due and payable, and the amount of tax paid by the mortgagee shall be added to the principal of the debt secured thereby and recoverable therewith with interest thereon from the time of payment.

(§2, Id.)

186. Chattel mortgages; void unless affidavit of mortgagee attached and recorded.¹

Every mortgage or conveyance intended to operate as a mortgage of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against the subsequent purchasers and mortgagees in good faith, unless the mortgage, having annexed thereto an affidavit or affirmation made and subscribed by the holder of said mortgage, his agent or attorney, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon, be recorded as directed in the succeeding section of this act; provided, nothing contained in this act shall be taken, construed or held to apply to any mortgage of personal property included in a mortgage of franchise and real estate heretofore or hereafter made by any railroad company, and which hath been or shall be recorded or registered as a mortgage of real estate in every county in which such railroad or any part of it is or shall be located, and it shall not be necessary to record as a chattel mortgage any such mortgage as is in this proviso described.

(“An act concerning mortgages on chattels” [Revision of 1902]; P. L. 1902, p. 487, §4.)

¹ Precedents, p. 691,

To discourage fraud and to afford creditors a fair opportunity for investigation, the affidavit of the agent or attorney must state not simply the amount for which the mortgage is given, but "how the debt on which it is founded arose, what was the cause of the debt, or how the relation of creditor and debtor was created between the parties." *Ehler v. Turner*, 35 N. J. Eq., 68.

The affidavit may, by reference, bring in matters included in the mortgage and the consideration being thus shown there is sufficient compliance with the statute. *Fletcher v. Bonnet*, 51 N. J. Eq., 615.

Affidavit, otherwise defective, may be aided by being read in connection with the mortgage. *Tompkins v. Crosby*, 19 Atl. Rep., 720.

Affidavit need not include the special incidents and names of the actors in the transaction. *Douglas v. Williams*, 48 Atl. Rep., 222.

Affidavit may be made by (1) a trustee, *Fletcher v. Bonnet*, 51 N. J. Eq., 615; (2) an officer of a corporation acting as trustee, *Camden Safe Deposit Co. v. Burlington Carpet Co.*, 33 Atl. Rep., 479.

For examples of affidavits held to be void for non-compliance with the statute, see *Ehler v. Turner* (1882), 35 N. J. Eq., 68; *Dunham v. Cramer*, 51 Atl. Rep., 1011; *Boice v. Conover*, 54 N. J. Eq., 531; *Graham Button Co. v. Spielman*, 50 N. J. Eq., 120; *aff'd* in 50 N. J. Eq., 796.

Capital stock is not a proper subject of chattel mortgage. *Williamson v. N. J. Southern R. R. Co.*, 26 N. J. Eq., 398.

187. Chattel mortgages; how recorded.

The instruments mentioned in the preceding section, and not excepted in the proviso, shall be recorded in suitable books provided for that purpose in the clerk's office of the county where the property so mortgaged shall be at the time of the execution of such instrument; provided, in any county where the office of the register of deeds and mortgages exists, or hereafter may be created, such instrument shall be recorded in the office of such register; and the said clerks and registers shall enter at the foot of the record of each mortgage an instrument so recorded, the time when the same was received by him at his office to be recorded, and endorsed on each mortgage and instrument when recorded the time when the same was

received at his office to be recorded and the book and page in which the same has been recorded, and shall thereupon deliver the same to the party entitled to it, or his order.

(Id., §5.)

188. Chattel mortgages; how acknowledged.

No chattel mortgage or conveyance intended to operate as a mortgage of goods and chattels shall be recorded unless the execution thereof shall be first acknowledged or proved, and such acknowledgment or proof certified thereon in the manner prescribed by the act entitled "An act respecting conveyances."

(Id., §6.)

189. Chattel mortgages; effect of recording.

Every chattel mortgage heretofore recorded, according to law or hereafter recorded pursuant to the provisions of this act shall be valid against the creditors of the mortgagor, and against subsequent purchasers and mortgagees, from the time of the recording thereof until the same be cancelled of record in the manner now provided by law for the cancelling of mortgages of real estate.

(Id., §9.)

"The doctrine is entirely settled that it is only creditors whose debts are fastened on their debtors' property that have the right to call in question the validity of a mortgage which this statute makes void as against the creditors of the mortgagor. The statute makes a wide distinction between creditors and subsequent purchasers and mortgagees. A subsequent purchaser or mortgagee, to be in a position where he may take advantage of the failure on the part of the prior mortgagee to comply with the terms of the statute, must have made his purchase or taken his mortgage in good faith; that is, without notice of such prior mortgage, but not so with a creditor. He may know when his debt accrues that his debtor's property is already subject to a mortgage, yet if such mortgage

has not been executed and recorded in accordance with the requirements of the statute, he may, as soon as his debt becomes fastened on his debtor's property, successfully insist that the mortgage, as to his debt, is, by force of the statute, absolutely void."

Van Fleet, V. C., in *Graham Button Co. v. Spielman*, 50 N. J. Eq., 120; *aff'd* 50 N. J. Eq., 796.

In the above case it was held that the debts of creditors became fastened on the property of the debtor on the appointment of a receiver under the Corporation Act. Such receiver as representing the creditors may sue to have a mortgage set aside when not executed and recorded in accordance with the act.

Mortgage must be recorded to create lien against subsequent creditors. *Roe v. Meding*, 53 N. J. Eq., 350.

Mortgage on stock of merchandise, the mortgagee being in possession and selling in the regular course of business, is not per se fraudulent if recorded. *Lister v. Simpson*, 38 N. J. Eq., 438; *aff'd* 39 N. J. Eq., 595.

Correction of errors in conveyances.

An act for the above purpose was passed March 29, 1904, being a supplement to an act entitled, "An act respecting conveyances" (Revision of 1898), approved June 14, 1898, and reads as follows:

1. Any corporation or association heretofore created, or which may be hereafter created, under and by virtue of any law of this state, which may have, during the period of its corporate existence, made any conveyance of lands in this state, and thereafter shall cease to exist, by reason of dissolution, death of all its members, or otherwise, and it shall thereafter be discovered that error exists in the deed or conveyance of any such lands so conveyed by any corporation or association as aforesaid, then, in such case, any surviving president, vice president, director or trustee of such defunct corporation or association may, by deed of confirmation containing a proper recital, correct such error in such deed or conveyance; and in case there shall be no surviving president, vice president,

director or trustee of such corporation or association, then the oldest son or grandson (if such oldest son shall be deceased; provided, said son or grandson shall be of legal age) of any such president, vice president or the oldest son or grandson of the last surviving director or trustee may make said deed of confirmation; and any such deed so made by any surviving president, vice president, director or trustee of any such corporation or association, or the oldest son or grandson of any such president, vice president, last surviving director or trustee of any such corporation or association, or of any commissioner appointed to make and execute such deed, as hereinafter set forth, shall be as valid and effectual in law as if made and executed under the corporate seal of such corporation or association during the period of its corporate existence; provided, that no person or persons, corporation or association, shall be entitled to the benefit of this act, without having first applied by petition to a circuit judge or law judge of the county in which the lands may be situate, setting forth the nature of the error in such deed or conveyance, and the relief sought; and upon ten days' notice of such application given to the person who, under this act, would be the proper person to make and execute such deed, a hearing shall be had; and if the said judge to whom such application shall be made, shall be convinced of the merit thereof he shall forthwith make an order directing such surviving president, vice president, director or trustee, or the oldest son or grandson of any such president, vice president, director or trustee of such corporation or association, to execute said deed; in the event of the neglect, refusal or failure of the person so ordered to make and execute such deed, within twenty days after

the service of a certified copy of such order upon him, said judge shall appoint a commissioner to execute said deed; all costs of such application to be at the expense of the petitioner, or the person or persons, corporation or association so benefited thereby.

2. All acts or parts of acts inconsistent herewith, to the extent of such inconsistency, be and the same are hereby repealed, and this act shall be deemed a public act and take effect immediately.

ACT CONCERNING PUBLIC UTILITIES

LAWS OF 1911, CHAPTER 195.

Being an act entitled "An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers."

Creation of board; how appointed and designated.

I.

1. There shall be a commission vested with the powers and duties hereinafter specified, which shall consist of three persons, citizens of this state, not under thirty years of age, who shall be appointed by the Governor, by and with the advice and consent of the senate, and who shall constitute and be designated and known as the Board of Public Utility Commissioners.

Present board continued; term of office; vacancies; removal.

2. The Board of Public Utility Commissioners, as heretofore constituted, shall be the Board of Public Utility Commissioners under this act until the expiration of the term of office of each of said commissioners respectively, and at the expiration of their respective terms a successor shall be appointed for the term of six

years from the date of such expiration. All vacancies, except through expiration of term, shall be filled for the unexpired term only. The Governor may remove any commissioner for neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defence upon not less than ten days' notice.

Annual salary.

3. The members of said board shall each receive an annual compensation of seven thousand five hundred dollars, to be paid in equal monthly payments by the treasurer of the state.

Travelling expenses paid.

4. The commissioners and secretary and other employees of said board shall be entitled to receive from the state of New Jersey their necessary travelling expenses while travelling on the business of said board, which shall be paid on proper voucher therefor, approved by the president of said board.

Election of president; appointment and compensation of counsel and employees.

5. The board shall organize annually by the election of a president; it shall appoint a secretary, counsel and such other employees as it may deem necessary, fix their duties, compensation and terms of service.

Duties of secretary.

6. The secretary shall keep full and correct minutes of all of the transactions and proceedings of the board; perform such other duties as may be required

of him, and shall be the official reporter of the proceedings of the board.

Publication of decisions of board.

7. The board shall furnish its secretary such of its findings and decisions as, in its judgment, may be of general public interest; the secretary shall compile the same for the purpose of publication in a series of volumes to be designated "Reports of the Board of Public Utility Commissioners of the State of New Jersey," which shall be published in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the commission therein contained without any further proof or authentication thereof. The contents of said reports shall not be under the supervision or control of the official state editor.

Purchase of necessary apparatus.

8. The board shall purchase such materials, apparatus and standard measuring instruments as it may deem necessary.

Connection with public utilities prohibited.

9. No member or employee of said board shall have any official or professional relation or connection with, or hold any stock or securities in any public utility as herein defined, operating within the state of New Jersey, nor hold any other office of profit or trust under the government of this state or of the United States.

Office and meetings.

10. The board shall have an office in the state house, and in such other place or places as it may

designate, and shall meet at such times and places within this state as it may provide by rule or otherwise, and shall be provided with all necessary furniture, stationery, maps, supplies and office appliances.

Rules of board.

11. The board shall have the power to make all needful rules for its government and other proceedings not inconsistent with this act, and shall have and adopt a common seal.

Limitation of expenses.

12. The total expenses of the board, including salaries, shall not exceed one hundred thousand dollars per annum.

Hearings.

13. The members of the board are hereby empowered to sit singly for the purpose of taking testimony in any proceeding. A majority vote of the board shall be necessary to the making of any order.

Annual report.

14. The board shall report annually, on or before the first day of January, to the Governor, making such recommendations as it may deem proper, which report shall be laid before the next succeeding legislature.

Jurisdiction of board; "public utility" defined.

15. The board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provi-

sions of this act. The term "public utility" is hereby defined to include every individual, co-partnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage or control within the state of New Jersey any steam railroad, street railway, traction railway, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by the state of New Jersey or by any political subdivision thereof.

II.

Powers of board; investigations.

16. The board shall have power:

(a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public utility as herein defined.

Appraisal of property.

(b) From time to time to appraise and value the property of any public utility as herein defined, whenever in the judgment of said board it shall be necessary so to do, for the purpose of carrying out any of the provisions of this act, and in making such valuation the board may have access to and use any books, documents or records in the possession of any department or board of the state or any political subdivision thereof.

Fix rates.

(c) After hearing, upon notice, by order in writing, to fix just and reasonable individual rates, joint

rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility as herein defined, whenever the board shall determine any existing individual rate, joint rate, toll, charge or schedule thereof or commutation, mileage, or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential.

Schedule of rates; filing of.

(d) To require every public utility as herein defined to file with it complete schedules of every classification employed and of every individual or joint rate, toll, fare or charge made, charged or exacted by it for any product supplied or service rendered within this state, as specified in such requirement.

Classifications.

(e) After hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed, and followed thereafter by any public utility as herein defined.

Standards of measurement.

(f) After hearing, by order in writing, to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by any public utility as herein defined, and to prescribe reasonable regulations for examination and test of such product or service and for the measurement thereof.

Meters.

(g) After hearing, by order in writing, to establish reasonable rules, regulations, specifications and standards, to secure the accuracy of all meters and appliances for measurements.

Test of meters.

(h) To provide for the examination any test of any and all appliances used for the measuring of any product or service of a public utility as herein defined.

Right of entry.

(i) by its agents, experts or examiners, to enter upon any premises occupied by any public utility as herein defined, for the purpose of making the examinations and tests provided for in this act and to set up and use on such premises any apparatus and appliances necessary therefor.

Fees for tests.

(j) To fix the fees to be paid by any consumer or user of any product or service of a public utility as herein defined, who may apply to said board for such examination or test to be made, and any consumer or user may have any such appliance tested upon the payment of the fees fixed by the board, which fees shall be repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user, and in that event, paid by the public utility.

Intersecting railroads and private sidings.

(k) After hearing, upon notice, by order in writing, to direct any railroad or street railway company

to establish and maintain at any junction or point of connection or intersection with any other line of said road, or with any line of any other railroad, street railway, or traction company, such just and reasonable connections as shall be necessary to promote the convenience of shippers of property, or of passengers, and in like manner to direct any railroad, street railway or traction company engaged in carrying merchandise to construct, maintain and operate, upon reasonable terms, a switch connection with any private side-track, which may be constructed by any shipper to connect with the railroad or street railway where, in the judgment of the board, such connection is reasonable and practicable, and can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of the same.

Change of gauge.

(1) To permit any street railway or traction company to change its existing gauge to standard steam railroad gauge, upon such terms and conditions as said board shall prescribe.

Additional powers.

17. The board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:

Enforce compliance with laws.

(a) To comply with the laws of this state and any municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of this state.

Proper service.

(b) To furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so.

Extension of facilities.

(c) To establish, construct, maintain and operate any reasonable extension of its existing facilities, where, in the judgment of said board such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same, and when the financial condition of the said public utility reasonably warrants the original expenditure required in making and operating such extension.

Uniform accounting.

(d) To keep its books, records and accounts so as to afford an intelligent understanding of the conduct of its business and to that end to require every such public utility of the same class to adopt a uniform system of accounting. Such system shall conform, in so far as in the judgment of the board is practicable, to any system adopted or approved by the inter-state commerce commission of the United States of America.

Reports to board.

(e) To furnish annually a detailed report of finances and operations, in such form and containing such matters as the board may from time to time by order prescribe.

Depreciation account.

(f) To carry, whenever in the judgment of the board it may reasonably be required, for the protec-

tion of stockholders, bondholders or creditors, a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the board may prescribe. The board shall from time to time ascertain and determine, and by order in writing after hearing fix proper and adequate rates of depreciation of the property of each public utility, in accordance with such regulations or classifications, which rates shall be sufficient to provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund. The income from investments of moneys in such fund shall likewise be carried in such fund. This fund shall not be extended otherwise than for depreciation, improvements, new constructions, extensions or additions to the property of such public utility.

Notice of accidents.

(g) To give such notice to the board as the board may by rule require of any and all accidents which may occur within this state upon the property of any public utility as herein defined or directly or indirectly arising from or connected with its maintenance or operation, and to investigate any such accident and to make such order or recommendation with respect thereto as in its judgment may be just and reasonable.

Increase of rates.

(h) When any public utility as herein defined shall increase any existing individual rates, joint rates, tolls,

charges or schedules thereof, as well as commutation, mileage and other special rates, or change or alter any existing classification, the board shall have power either upon written complaint or upon its own initiative to hear and determine whether the said increase, change or alteration is just and reasonable. The burden of proof to show that the said increase, change or alteration is just and reasonable shall be upon the public utility making the same. The board shall have power pending such hearing and determination to order the suspension of the said increase, change or alteration until the said board shall have approved said increase, change or alteration, not exceeding three months. It shall be the duty of the said board to approve any such increase, change or alteration upon being satisfied that the same is just and reasonable.

III.

Prohibitions.

18. No public utility as herein defined shall:

Unjust discrimination.

(a) Make, impose or exact any unjust or unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, commutation rate, mileage and other special rate, toll, fare, charge or schedule for any product or service supplied or rendered by it within this state.

Unjust classification.

(b) Adopt or impose any unjust or unreasonable classification in the making or as the basis of any individual or joint rate, toll, fare, charge or schedule for any product or service rendered by it within this state.

Unjust regulations or improper service.

(c) Adopt, maintain or enforce any regulation, practice or measurement which shall be unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or otherwise in violation of law; nor shall any public utility as herein defined provide or maintain any service that is unsafe, improper or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by said board.

Undue preference.

(d) Make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever.

Increase of indebtedness unless approved.

(e) Hereafter issue any stocks, stock certificates, bonds or other evidences of indebtedness payable in more than one year from the date thereof until it shall have first obtained authority from the board for such proposed issue. It shall be the duty of the board, after hearing, to approve of any such proposed issue maturing in more than one year from the date thereof, when satisfied that the same is to be made in accordance with law and the purpose of such issue be approved by said board.

Capitalize franchises, contracts, etc.

(f) Capitalize any franchise to be a corporation; capitalize any franchise in excess of the amount (ex-

clusive of any tax or annual charge) actually paid to the state or any political subdivision thereof as the consideration of such franchise; capitalize any contract for consolidation, merger or lease; issue any bonds or other evidence of indebtedness against or as a lien upon any contract for consolidation, merger or lease; provided, however, that the provisions of this section shall not prevent the issuance of stock, bonds or other evidence of indebtedness subject to the approval of said board by any lawfully merged or consolidated public utilities not in contravention of the provisions of this section.

No gratuities to officials.

(g) Hereafter give, grant or bestow upon any local, municipal or county official any discrimination, gratuity or free service whatsoever, but nothing herein contained shall prevent the entry into any public conveyance or in or upon the property of any such public utility as herein defined of any such official in the pursuit of his public duties in connection with the particular conveyance or property so entered by him, upon exhibiting his authority so to do.

No sale, lease, mortgage, merger, etc., without approval.

(h) Without the approval of the board sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof; nor merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other public utility as herein defined. Every sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in violation of any of the provisions hereof shall be void and of no effect. Noth-

ing herein contained shall be construed in any wise to prevent the sale, lease or other disposition by any public utility as herein defined of any of its property in the ordinary course of its business.

Transfer of stock to other public utility companies void, unless authorized by board.

19. No public utility as herein defined incorporated under the laws of this state shall sell, nor shall any such public utility make or permit to be made upon its books any transfer of any share or shares of its capital stock, to any other public utility as herein defined, unless authorized to do so by the board. Nor shall any public utility as herein defined incorporated under the laws of this state sell any share or shares of its capital stock or make or permit any transfer thereof to be made upon its books, to any corporation, domestic or foreign, result of which sale or transfer in itself or in connection with other previous sales or transfers shall be to vest in such corporation a majority in interest of the outstanding capital stock of such public utility corporation unless authorized to do so by the board. Every assignment, transfer, contract or agreement for assignment or transfer by or through any person or corporation to any corporation in violation of any of the provisions hereof shall be void and of no effect, and no such transfer shall be made on the books of any public utility corporation. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired.

Abandonment of railroad stations.

20. No railroad company shall, without first obtaining the approval of the board, abandon any railroad station or stop the sale of passenger tickets, or

cease to maintain an agent to receive and discharge freight at any station now or hereafter established in this state, at which passenger tickets are now or may hereafter be regularly sold, or at which such agent is now or may hereafter be maintained.

Grade crossings.

21. No highway shall be constructed across the tracks of any railroad company at grade, nor shall the tracks of any railroad company, street railway or traction company be laid across any highway, so as to make a new crossing at grade, nor shall the tracks of any railroad or street railway or traction company be laid across the tracks of any other railroad or street railway or traction company without first obtaining therefor permission from the board; provided, however, that this section shall not apply to the replacement of lawfully existing tracks.

Gates at grade crossings.

22. Whenever it appears to the board that a public highway and a railroad cross one another, or that a public highway and a street railway cross one another, or that a railroad and a street railway cross one another at the same level, and that conditions at such grade crossing make it necessary for the protection of the traveling public at such grade crossing that gates be erected or that some other reasonable provision for the protection of the traveling public at such grade crossing should be adopted, the board may order and direct such railroad company or such street railway company, or either or both of them, to install such protective device or devices or adopt such other reasonable provision for the protection of the traveling public at such crossing as in the discretion of the board shall be necessary.

Statement of names and duties of employees may be required.

23. Said board shall have power to require every public utility as herein defined to file with the board a statement in writing, verified by the oaths of the president and secretary thereof, respectively, setting forth the name, title of office or position and post-office address, and the authority, power and duties of every officer, member of the board of directors, trustees, executive committee, superintendent, chief or head of construction and operation, or department, division or line of construction and operation thereof, in such form as to disclose the source and origin of each administrative act, rule, decision, order or other action of the corporation, and shall, within ten days after any change is made in the title of, or authority, powers or duties appertaining to any such office or position, or the person holding the same, file with the board a like statement, verified in like manner, setting forth such change.

Grants of special franchises subject to approval.

24. No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of this state, shall be valid until approved by said board, such approval to be given when, after hearing, said board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests, and the board shall have power in so approving to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require,

Municipalities operating public utility to keep accounts.

25. Every municipality operating any form of public utility service shall keep the accounts thereof in the manner prescribed by the board for the accounting of similar public utilities, and shall file with said board such statements thereof as it may be directed so to do by said board.

IV. •**Rules for hearings.**

26. All hearings and investigations before the board or any member thereof shall be governed by rules adopted by the board, and in the conduct thereof neither the board nor such member shall be bound by the technical rules of legal evidence.

May compel attendance of witnesses, etc.

27. The board shall have power to compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all other documents, and any member of the board shall have power to administer oaths to all witnesses who may be called before the board or any member thereof. Subpœnas issued by the board shall be signed by one of the members thereof and by the secretary, and may be served by any person of full age. The fees of witnesses required to attend before the board shall be one dollar for each day's attendance and three cents for every mile of travel, by the nearest generally travelled route, in going to and from the place where the attendance of the witness is required, such fees to be paid when the witness is excused from further attendance, and the disbursements made in payment of such fees shall be audited and paid in the same manner provided for the payment of expenses of the board; provided, how-

ever, that no witness subpoenaed at the instance of parties other than the board shall be entitled to compensation from the state for attendance or travel, unless the board shall certify that his testimony was material to the matter investigated. If a person subpoenaed to attend before the board, or a member thereof, fails to obey the command of such subpoena without reasonable cause, or if a person in attendance before the board, or a member thereof, refuses, without lawful cause, to be examined or to answer a legal or pertinent question, or to produce a book or paper, when ordered so to do by the board, or any member thereof, the board or such member thereof may apply to the supreme court or any justice thereof, who shall have the power of the court for that purpose, upon proof, by affidavit of the facts, for an order returnable in not less than two nor more than ten days, directing such person to show cause before the court, or the justice thereof who made the order, or to any other justice, why he should not comply with the subpoena or order of the board; upon the return of such order the court or justice before whom the matter shall come on for hearing, shall examine under oath such person whose testimony may be relevant, and such person shall be given an opportunity to be heard, and if the court or justice shall determine that such person refused without legal excuse to obey the command of such subpoena, or to be examined, or to answer a legal or pertinent question, or to produce a book or a paper which he was ordered to produce, said court or justice may order said person to comply forthwith with the subpoena or order of the board, and any failure to obey such order of the court or justice may be punished by said court or justice as a contempt of said supreme court.

Depositions.

28. The board may, in any investigation or hearing, by its order in writing, cause the depositions of witnesses residing within or without the state to be taken in such manner as it may, by rule, prescribe.

Witnesses compelled to answer: immunity in certain cases.

29. No person shall be excused from testifying or from producing any book, document or paper in any investigation or inquiry by or upon the hearing before said board or any member thereof, when ordered so to do by the board or any member thereof, upon the ground that the testimony or evidence, book, document or paper required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained is intended to give, or shall be construed in any manner giving, to any corporation immunity of any kind. No member or employee of the board shall be required to give testimony in any civil suit to which the board is not a party, with regard to information obtained by him in the discharge of his official duty.

Certified copies of records as evidence; fees for certifying.

30. Copies of all official documents and orders filed or deposited in the office of the board, certified by a

member of the board, or by the secretary to be true copies of the originals, under the official seal of the board, shall be evidence in like manner as the originals in all courts of this state, and the board may charge and collect for such copies ten cents for each folio; the fees so collected shall be paid into the treasury of the state.

Re-hearings, etc.

31. The board, at any time, may order a re-hearing and extend, revoke or modify any order made by it.

Service of orders of board; when to be operative.

32. Every order made by the board shall be served upon the person or public utility, as herein defined, affected thereby, within ten days from the time said order is filed, by personally delivering or by mailing a certified copy thereof, in a sealed package, with postage prepaid, to the person to be affected thereby, or in case of a public utility, to any officer or agent thereof, upon whom a summons may be served in accordance with the provisions of the law of this state. All orders of the board to continue service or rates in effect at the time said order is made shall be immediately operative; all other orders shall become effective upon the date specified therein, which shall be at least twenty days after the date of said order.

Non-compliance with order; penalty.

33. In default of compliance with any order of the board when the same shall become effective the person or public utility affected thereby shall be subject to a penalty of one hundred dollars per day for every day during which such default continues, to be recovered in an action of debt in the name of the state, and

observance of the orders of the board may be enforced by mandamus or injunction in appropriate cases, or by suit in equity to compel the specific performance of the order or orders so made, or of the duties imposed by law upon such public utility.

Violation of act by individual a misdemeanor.

34. Any person who shall knowingly and wilfully perform, commit or do, or participate in performing, committing or doing, or who shall knowingly and wilfully cause, participate or join with others in causing any public utility corporation or company to do, perform or commit, or who shall advise, solicit, persuade, or knowingly and wilfully instruct, direct or order any officer, agent or employee of any public utility corporation or company to perform, commit or do any act or thing forbidden or prohibited by this act, shall be guilty of a misdemeanor.

Neglect to perform duties required by act a misdemeanor.

35. Any person who shall knowingly and wilfully neglect, fail or omit to do or perform, or who shall knowingly and wilfully cause or join or participate with others in causing any public utility corporation or company to neglect, fail or omit to do or perform, or who shall advise, solicit or persuade, or knowingly and wilfully instruct, direct or order any officer, agent or employee of any public utility corporation or company to neglect, fail or omit to do any act or thing required to be done by this act shall be guilty of a misdemeanor.

Violations by public utilities a misdemeanor.

36. Any public utility corporation which shall perform, commit or do any act or thing hereby prohibited

or forbidden, or which shall neglect, fail or omit to do or perform any act or thing hereby required to be done or performed by it, shall be guilty of a misdemeanor.

This act not to affect right of action under other laws.

37. This act shall not have the effect to release or waive any right of action by the board or by any person for any right, penalty or forfeiture which may have arisen or which may arise, under any of the laws of this state, and any penalty or forfeiture enforceable under this act shall not be a bar to or affect a recovery for a right, or affect or bar any indictment against any public utility as herein defined, or person or persons operating such public utility, its officers, directors, agents or employees.

Orders of board reviewable by court.

38. Any order made by the board may be reviewed on the application of any person or public utility affected thereby, by certiorari in appropriate cases, or by petition, to the supreme court of the state of New Jersey, within thirty days from the date upon which such order becomes effective, as herein provided; said petition shall be filed with the clerk of the supreme court and a copy thereof served upon the secretary of the board either personally or by leaving same at the office of said board in the city of Trenton. The supreme court is hereby given jurisdiction to review said order of the board, and to set aside such order when it clearly appears that there was no evidence before the board to support reasonably such order, or that the same was without the jurisdiction of the board. The evidence presented to the board, together with the finding of the board and any order issued

thereon shall be certified by the board to the supreme court. The procedure for review, except as herein provided, shall be prescribed by rules of the supreme court.

Effect of writ to review.

39. The allowance of a writ of certiorari or the institution of any proceeding to review any order of the board by the supreme court as aforesaid, shall in no case supersede or stay the order of the board, unless the supreme court, or a justice thereof, shall so direct, and the appellant may be required by the supreme court or a justice thereof, to give bond in such form and of such amount as the supreme court, or the justice thereof allowing the stay, shall require.

Preference of proceedings.

40. Any proceeding in any court of this state directly affecting an order of the board or to which the board is a party, shall have preference over all other civil proceedings pending in such court.

Free passes to officers, employees, etc.

41. Nothing in this act shall be construed to prevent the issue by any steam railroad, street railway, traction, canal, express, telephone or telegraph companies or other common carriers, of free passes or franks to their employees, officers, agents, surgeons, physicians, attorneys-at-law, and their families, and the interchange between said public utilities and common carriers, of passes or franks for their employees, officers, agents, surgeons, physicians, attorneys-at-law, and their families.

Unconstitutionality of any provision not to affect other provisions.

42. If, for any reason, any section or provision of, this act shall be questioned in any court, and shall be held to be unconstitutional or invalid, no other section or provision of this act shall be affected thereby.

Repeal of inconsistent acts.

43. All acts or parts of acts inconsistent herewith are hereby repealed, and this act shall take effect on the first day of May, Anno Domini one thousand nine hundred and eleven.

Approved April 21, 1911.

CRIMES

Provisions of "An Act for the punishment of crimes (Revision of 1898)," P. L. 1898, p. 794, especially applicable to corporations.

190.* Embezzlement.

Any person who, holding an office of trust and profit under the authority of this state, or under any public or private corporation existing under the laws thereof, who shall embezzle any of the money, property or securities committed to his keeping, with intent to defraud the state, or any county thereof, or any city, borough, township, body corporate or person, or shall fraudulently dispose of the same, shall be guilty of a high misdemeanor.

(§167.)

191. Fraudulent appropriation of corporate property.

Any person who, being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purpose other than the use or purpose of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanor.

(§172.)

* Arbitrary section number; see footnote, p. 247.

192. Keeping fraudulent accounts.

Any person who, being a director, public officer or manager of any body corporate or public company, shall, as such, receive or possess himself of any of the property of such body corporate or public company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor.

(§173.)

193. Wilful destruction of books, making false entries, &c.

Any person who, being a director, manager, public officer or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing, or valuable security belonging to the said body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of accounts or other document belonging thereto, shall be guilty of a misdemeanor.

(§174.)

194. Publishing false statements.

Any person who, being a director, manager or public officer of any body corporate or public company, shall make, circulate or publish or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any

member, shareholder or creditor of any such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor.

(§175.)

195. Embezzlement by servants, agents, &c.

Any servant, employee or agent of any individual or incorporated company, who shall take or receive any money, bank bill or note, of or above the price or value of twenty dollars, belonging to his master, employer, or said incorporated company, with intent to defraud such master, employer or incorporated company thereof, and shall wilfully retain and appropriate to his own use the said money, bank bill or note, knowing the same to belong to his master, employer, or said incorporated company, shall be guilty of a misdemeanor.

(§179.)

196. Issuing false stock.

Every president, vice-president, director, cashier, treasurer, secretary or other officer, and every agent of any bank, insurance company, railroad company, manufacturing company, or of any other corporation, who shall wilfully or designedly sign, with intent to issue, transfer, sell or pledge, or cause to be issued, transferred, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or who shall wilfully or designedly sign, with intent to issue, transfer, sell or

pledge, or cause to be issued, transferred, sold or pledged, any certificate or other evidence of the ownership or transfer of any share or shares in such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, the signing, issuing, transferring, selling or pledging of which, by such president, vice-president, director, cashier, treasurer, secretary or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, and every such president, vice-president, director, cashier, treasurer, secretary or other officer or agent who shall wilfully, designedly or fraudulently issue, transfer, sell or pledge any such certificate or other evidence, or any such instrument as aforesaid, with intent to prejudice, injure, damage or defraud any person, body politic or corporate, shall be guilty of a high misdemeanor.

(§200.)

CRIMINAL PROCEDURE.

Provisions of "An Act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases (Revision of 1898)," P. L. 1898, p. 866, especially applicable to corporations.

197.* Summons against corporations, how issued and served.

When any indictment shall be found, or information filed by the attorney-general against any corporation, city, borough or township, it shall and may be lawful for the attorney-general or prosecuting attorney for the state to cause a summons or notice to be directed to the said corporation, city, borough or township in its corporate name, commanding or notifying the said corporation, city, borough or township to appear at the said court, to answer to such indictment or information, a copy of which summons or notice shall be served on the president, or other head officer of the said corporation, or clerk of said city, borough or township, or left at his dwelling-house or usual place of abode, at least six entire days before the time at which the said corporation, city, borough or township are by said summons or notice required to appear; and in case the president or other head officer of the corporation cannot be found in the county in which said indictment shall have been presented or informa-

* Arbitrary section number; see footnote, p. 247.

tion filed, to be served with a copy of said summons or notice as aforesaid, and has no dwelling-house or other usual place of abode within the said county, then a copy of said summons or notice may be served on the clerk, cashier, superintendent or secretary of the said corporation, if any there be in the said county in which the said indictment shall have been found or information filed, and if there be no clerk, cashier or secretary of said corporation found in said county, then on one of the directors of said corporation, or left at his usual place of abode six entire days before the commencement of the said term to which the said summons or notice shall be returnable.

(§61.)

198. Proceedings after return "served," &c.

When the sheriff or other officer shall return such summons or notice, "summoned" or "served," the said corporation, city, borough or township shall be considered as in court, and as appearing to said indictment or information; and the court shall order the clerk to enter an appearance for said corporation, city, borough or township, and indorse the plea of not guilty on said indictment or information, and further proceedings may then be had thereon, in the same manner as if the said corporation, city, borough or township had appeared and pleaded not guilty thereto; and if the said corporation, city, borough or township shall be convicted on said indictment or information, the said court may proceed to pass judgment thereon, and cause process of execution to be issued to the sheriff of the county against the goods and chattels or lands and tenements of the said corporation, city, borough or township, for the amount of the fine and costs which may be awarded against them, in the

same manner as on a judgment in a civil action; and the said sheriff shall proceed to sell the goods and chattels or lands and tenements of the said corporation, city, borough or township on the said execution, in the same manner as on executions issued in a civil suit.

(§62.)

199. Process “not served.”

In case the sheriff or other officer shall return such summons or notice “not summoned” or “not served,” and an affidavit shall be made to the satisfaction of the court, that the same could not be served as heretofore mentioned in this act, or in case the sheriff or other officer shall make affidavit that he hath made diligent inquiry, and cannot ascertain the name of any president, secretary or director of said corporation, resident in the county in which the said indictment shall have been found or information filed, then the court shall make an order directing the said corporation to cause their appearance to be entered, and to plead to said indictment or information on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in such one of the public newspapers printed in this state as the court may direct, for at least six weeks; and if the said corporation shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of the publication of such order, in manner aforesaid, the court being satisfied of the truth thereof, shall order the clerk to enter an appearance for said corporation, and indorse a plea of not guilty on said indictment or information, and thereupon further proceedings may be had on the said indictment or in-

formation, in the same manner as if the said corporation had appeared and pleaded not guilty thereto; and in case of conviction execution may be issued against said corporation, and proceedings had thereon, as in the preceding section mentioned.

(§63.)

FORMS AND PRECEDENTS

BEFORE ORGANIZATION.

Form 1.

SUBSCRIPTION AGREEMENT BEFORE ORGANIZATION.

WHEREAS the organization is contemplated of a corporation under an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," to be known as the
or by such other name as may be selected, with a capital stock of not less than \$
for the purpose of

, and it is desired by the undersigned to become a shareholder in the said corporation:

Now, THEREFORE, , the undersigned, does hereby promise and agree to and with [insert name of promoter or person organizing the corporation], of , in consideration of the promises of the said hereinafter stated, that he will pay to the said or to any person or corporation to whom he may assign this agreement, on demand, the sum of dollars, being the subscription price of shares of the capital stock of the said corporation, or such part thereof as may be called for. The stock thus paid for to be delivered at the earliest possible moment after the organization of the company, and meanwhile proper receipts or scrip to be issued to the undersigned.

This agreement is conditioned upon the procuring by the said of other bona fide subscriptions, to the capital stock of the said corporation, aggregating in all not less than \$

The said on his part, in consideration of the foregoing, promises to use his best endeavors to obtain such amount of subscriptions, and his best efforts to perfect the organization of the said corporation.

Witness our hands and seals this day of , 191 .

Form 2.

UNDERWRITERS' AGREEMENT.

WHEREAS a certain Syndicate proposes to organize, under the laws of the State of New Jersey, a corporation, to be known as the

Company (or some other name satisfactory to such Syndicate), hereinafter called the corporation, the object of which corporation shall be, among other things, to manufacture, buy and sell and kindred products, which corporation shall have a capital stock of _____ dollars, represented by _____ shares, each of the par value of one hundred dollars, and which capital stock shall consist of _____ dollars, evidenced by _____ shares of _____ per cent. cumulative stock (preferred) and _____ dollars, evidenced by _____ shares of common stock; and

WHEREAS such Syndicate proposes that there shall, by proper instruments of transfer and conveyance, be sold, transferred and assigned to the corporation the real estate, now being used for manufacturing and the buildings, appurtenances, easements, plants, machinery, fixtures, utensils, good-will, trade-rights and trade-marks now owned by the _____ and the Syndicate further proposes that there shall be furnished to the corporation, at the time of such sale and transfer to it, _____ dollars for working capital; for all of which the Syndicate shall receive from and be paid by the corporation _____ dollars of said preferred stock full paid and non-assessable, and _____ dollars of said common stock, full paid and non-assessable; it being the intention that _____ dollars of said preferred stock, and _____ dollars of said common stock shall remain in the treasury of the corporation for further working capital and to acquire additional properties; and the Syndicate shall have the right to furnish additional plants, other than those above named, to the extent of _____ dollars, at the purchase price thereof to the Syndicate, or shall have the right to furnish cash to the extent of _____ dollars on the same basis as subscribers to this agreement; and

WHEREAS the Syndicate shall be represented in the carrying out and enforcement of this contract by the _____ Bank (hereinafter called the Bank) of the City of _____, State of _____; and which Bank shall be and is hereby given the right to enforce compliance with this agreement by the parties hereto; and

WHEREAS it is deemed desirable and as an aid to the organization of the corporation that said preferred stock shall be underwritten and guaranteed upon the terms and conditions herein contained; and

WHEREAS the undersigned desire, upon the terms and conditions

herein contained, each for himself, severally, and not jointly, to underwrite and guarantee the purchase of said preferred stock;

Now, THEREFORE, it is hereby agreed by and between the undersigned, severally, of the one part, and the Bank of the other part, as follows:

(1) The undersigned, each for himself, severally and not jointly and not for the others, do hereby agree to and do subscribe for and hereby agree to purchase so much of said preferred stock, at the par value thereof, as is set opposite their respective names, upon the terms and conditions herein contained, and hereby agree to pay the Bank the several amounts respectively set opposite their respective names, in cash, within ten days, as and when payment thereof shall be called for by the Bank, time to begin running from the date that the call for such payment is mailed by the Bank. On all payments which are made to the Bank hereunder, the Bank shall issue and deliver its negotiable receipts, which receipts shall be exchanged by the Bank for the stock of said corporation when issued, in accordance with this agreement.

(2) With each share of said preferred stock, so subscribed for and agreed to be purchased and paid for by the undersigned, respectively, the undersigned respectively shall receive one full paid share of said common stock.

(3) Any person who is a stockholder in any of the aforementioned companies, the purchase of whose plants or properties is so contemplated by the corporation, and who shall become a party to this agreement, may apply in payment of the stock so subscribed for by him so much of the purchase-price to be paid to his respective company for the sale by such respective company of the property named in the preamble hereof as may be authorized by such company, such authorization and application of such payment, in manner aforesaid, shall be equivalent to the cash payment as specified in paragraph "(1)" hereof.

(4) Notwithstanding said preferred stock so to be paid to said Syndicate as aforesaid is limited to a total of
dollars, the same may be underwritten and the purchase thereof guaranteed to an extent in an excess of
dollars, and in event of such excess, all the amounts subscribed and hereby guaranteed by the undersigned and the benefits accruing hereunder shall be proportionately abated and reduced. In no event, however, shall the total preferred stock of the corporation exceed

dollars. The syndicate is hereby vested with the exclusive power of determining to what extent such excess of underwriting and guaranteeing of said preferred stock shall be permitted.

(5) This agreement shall not become obligatory upon any of the parties hereto until said preferred stock to the amount of

dollars is underwritten and subscribed for, according to the terms and provisions hereof in which event this agreement

shall be and become binding, operative and effective, and notice of the fact that his agreement has become so binding, operative and effective shall be mailed by the Bank to the undersigned.

(6) The right and power to enforce this agreement when the same has become binding, operative and effective, is hereby vested exclusively in the Bank, which alone shall have the right to enforce payment of the obligations assumed by the parties hereto.

(7) If any of the undersigned shall fail to complete their respective payments when called upon by the Bank as herein provided, it shall be optional with the Bank to proceed to collect said amount remaining due, or to forfeit all payments thereof made hereunder by the party or parties in default, as fixed, specified and liquidated damages and deprive the parties so in default of the right of any participation whatever in this agreement or in the benefits to be derived therefrom.

(8) In case, for any reason whatever, before or after this agreement has become binding, operative and effective, the Syndicate shall determine to abandon said project and the organization of the corporation and shall so declare to the Bank, then this agreement, in all its parts, including the obligation to deliver said preferred stock or any of said common stock, shall be and become forthwith inoperative.

(9) Separate copies of this agreement may be executed with the same force and effect as if all the signatures to said separate copies were appended to one original agreement, and it is hereby expressly understood and agreed that the Syndicate shall have and is hereby given the exclusive right at its option at any time before any call is made hereunder, to substitute for the Bank any bank or trust company of New York City satisfactory to such Syndicate, and in case of such substitution, notice thereof shall be given to the undersigned and such substitution shall have the same force and effect as though such bank or trust company had been originally mentioned and designated in this agreement in lieu or place of the Bank herein specified, and in that event all the obligations of the undersigned created by this agreement shall inure, run to and be in favor of the bank or trust company so substituted.

Dated this day of , 191 .

NAME	ADDRESSES.	NUMBER OF PREFERRED SHARES SUBSCRIBED FOR.
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Form 3.

UNDERWRITERS' AGREEMENT FOR BONDS.

THE

COMPANY,

A corporation to be organized under the laws of the State of New Jersey, either by that or some similar name, proposes to acquire

the plants and equipment, of the following concerns or their capital stocks free from any liens:

(Insert names of concerns to be taken over.)

UNDERWRITING AGREEMENT.

For Series A, First Mortgage Five Per Cent. Sinking Fund Gold Bonds, due , part of an authorized issue of \$, bonds of \$1,000 each, \$, being withdrawn from public issue for disposal under the vendors' and subscribers' contracts, and \$ being reserved in the treasury of the company. Additional bonds may be issued only for the purpose of acquiring additional plants and equipment and for improvements and betterments, upon such terms and conditions as shall be approved by the holders of a majority of the bonds under the present issue outstanding at the time of such approval.

We, the undersigned, agree, each for himself, with The Company (hereinafter called the "Trust Company"), for itself and for the Company (hereinafter called the "Company"), and to and with each other, to subscribe to, receive and pay for the amount of Five Per Cent. First Mortgage Sinking Fund Gold Bonds of the company of one thousand dollars each, set opposite our respective signatures hereto, at the price of \$900 for each bond, 25 per cent. to be paid upon allotment and the balance upon the demand of the Trust Company.

We further agree to receive and pay for any smaller amount than that subscribed for which may be allotted to us respectively.

The conditions of this underwriting agreement are as follows:

(1) That this agreement shall not be binding upon the undersigned unless the entire amount of \$ of bonds shall have been underwritten.

(2) That within such reasonable time as shall be fixed by the Trust Company the said \$ of bonds (less any amount withdrawn by the underwriters as hereinafter set forth), will be offered to the public, through such banker or bankers or brokers as shall be designated by the company, for subscription at not less than 95 per cent.

(3) With the consent of the Trust Company, any other concern may be included in this combination, or others substituted therefor, provided the working efficiency or value are not lessened or impaired.

(4) That, if the amount of bonds subscribed and paid for upon such public issue shall be at least equal to the amount of bonds so offered to the public, then all liability under this agreement shall cease.

(5) That, in case the amount of bonds subscribed for upon such public offering shall be less than the total amount of bonds so offered to the public, or in case the bonds subscribed for upon such public

issue shall not be paid for to an amount equal, at the rate of 95 per cent., to the total of such public offering, then such deficiency in subscriptions and payments will, upon the demand of the Trust Company, be made good by the subscribers hereto in the manner aforesaid *pro rata* in the proportion their subscriptions for bonds not withdrawn by them from public issue bear to the total amount of bonds so offered to the public.

(6) That each underwriter shall receive in preferred and common stock of the company, 25 per cent. of the par value of the bonds hereby underwritten in each kind of stock, and also that all the proceeds, not to exceed 5 per cent. realized from the sale of the bonds at public issue in excess of 90 per cent., after deducting issue expenses, shall belong to the underwriters.

NOTE.—A corporation cannot give away its stock as a bonus so that the holders will hold it free of liability from the creditors in case of insolvency. (See note to Section 21.) When bonuses of stock are to be given with bonds, the stock must be contributed by the vendors or by some other person to whom it has been originally issued and by whom it has been paid for at par, either in money or property.

(7) That any underwriter shall have the option of withdrawing from the public issue any of the bonds hereby underwritten by him, provided that he notify the Trust Company five days prior to the date fixed for the public issue, that he elects to purchase said bonds, provided that in the proportion of the bonds so purchased he waives his said right to participate in the cash proceeds realized from the public issue.

(8) That no underwriter shall sell or offer for sale the bonds so purchased, nor any of the bonus shares of stock he receives, until twelve months after the date of payment, without the consent of the Trust Company.

Date		
NAME.	ADDRESS.	BONDS UNDERWRITTEN.

Form 4.

SHORT FORM OF OPTION.

The undersigned hereby agree in consideration of one dollar and other good and valuable considerations to sell to _____, or his assigns, as a going concern, the business carried on by the undersigned, including the property, machinery, materials, supplies used in

connection with the business and also the good-will, trade-rights, trade-marks, brands, patents, inventions, formulæ, recipes, trade-names and patterns owned or controlled by the undersigned, excepting only money in bank and bills and accounts receivable, which are to be and remain the property of the undersigned. All said property to be at the time of such sale free and clear of all liens, charges, encumbrances, taxes and assessments. The consideration for the said sale to be \$ in addition to inventory value of stock on hand at the time of transfer.

This option shall expire on the 1st day of , 19 , unless the said , or his assigns, shall before that time give notice in writing of his acceptance thereof, in which case the transaction is to be completed and the property delivered within four months thereafter, or earlier at the option of .

It is understood and agreed that in accepting this option assumes no responsibility or liability to purchase the said property unless , or his assigns, shall elect so to do by written notice, and that in case of assignment, this instrument and all of its parts and provisions shall inure to the benefit and run in favor of and be obligatory upon such transferee, and shall be free from liability therein and thereunder to the same purport and effect as though such transferee had originally been made the purchaser herein.

WITNESS our hands and seals this day of 19 .

Form 5.

OPTION AGREEMENT.

AGREEMENT made at the City of New York this day of 19 , between the Company (hereinafter referred to as the Vendor), and the stockholders thereof (hereinafter referred to as the Stockholders), by whom and on whose behalf this instrument shall be signed, of the one part, and (hereinafter referred to as the Purchasers), their nominees or assigns, of the other part, the said Company being organized under the laws of the State of , with a capital stock outstanding of \$, divided into shares of \$ each.

WHEREAS the Purchasers propose to form a corporation under the laws of the State of New Jersey (or other suitable State), to be called The Company (or other suitable name) (and hereinafter referred to as the Company), with a capital stock of about dollars (), divided into shares of one hundred dollars (\$100) each, of which part shall be seven per cent. (7%) cumulative preferred shares

(preferential as to capital as well as to dividend), and part common shares. The exact amount of such capital stock, more or less than

dollars and the proportions of said preferred and common shares into which the same shall be divided shall be as approved by one or more responsible bankers in the City of New York as sufficient for the acquisition of the businesses taken over

by said Company, and for the satisfaction of expenses and commissions connected therewith and with the formation and establishment of said Company, and for providing the

Company with such working capital in cash or such reserve of treasury stock as may also be so approved. No preferred stock shall be issued except in payment for plants, and for cash (necessary for working capital as aforesaid) to an amount equivalent to the preferred stock issued therefor.

THIS AGREEMENT WITNESSETH, that for and in consideration of one dollar in hand paid by the purchasers—

FIRST.—The Vendor hereby sells to the Purchasers the sole option until the 1st day of , 19 , of purchasing for the sum of

dollars the entire good will, plants, patents, trade-marks, and all visible and tangible real and personal property of said company, not including cash and bills and accounts receivable.

SECOND.—If said option is exercised, the sale may be completed on or before the 1st day of , 19 , (hereinafter called the time of transfer), but the directors for the time being of the company may extend said last-named date to a further period, not exceeding one month, and said sale shall take effect as from the date hereof, and no dividend shall be paid or declared, or any property whatsoever withdrawn from the Company, save in the ordinary course of business between said date and the time of transfer.

THIRD.—The real and personal property, assets and business of the Company, shall, at the time of transfer, be free and clear of all liens, mortgages, judgments, debts and other liabilities whatsoever, except engagements under current and ordinary business, contracts taken over by the Purchasers, and the Vendor and the Stockholders may retain the cash on hand or in bank, book accounts and bills receivable of the Company as they shall exist on the date hereof, for the satisfaction of any such encumbrances as aforesaid, and after that for their own use.

The Purchasers shall, however, have the right to retain and hold from the purchase consideration such part thereof as in their judgment shall be necessary to discharge any such liens, mortgages, judgments, debts or other such liabilities as may exist at the time of the transfer.

FOURTH.—The Vendor and Stockholders, shall, upon ten days' notice in writing given by the Purchasers to the Vendor, deliver to such responsible Trust Company in the City of New York (hereinafter referred to as the Trust Company) as shall be named by the Purchasers, the certificates for the number of shares of stock in the Company set oppo-

site the names of the Stockholders at the foot hereof, together with transfers thereof duly executed or signed in blank, and also an abstract or abstracts and searches of title to all the real property of the Company wheresoever situate, duly searched to date and showing all incumbrances by lawyers of responsibility and standing, or by title guarantee companies, and full and sufficient deeds, bills of sale, assignments and all such other conveyances, as shall be usual, necessary or proper for the conveying and assuring to the Purchasers, or their assigns, all the assets of the Company set forth in the paragraph hereof numbered "I," executed by the proper officers of the Company, and certificates affixed in such form as to entitle such of them as are usually recorded to be recorded in the usual and proper offices, and all such conveyances shall contain the usual covenants that the property so conveyed is free from incumbrances as herein provided.

All the foregoing are to be held by the Trust Company until the time of transfer or the expiration unaccepted of this option, and the Trust Company shall deliver separate receipts for said stock and for said abstracts and conveyances, and while the said abstracts remain on deposit with the Trust Company, no transfer of the real property of the Company or any part thereof, shall be made by it.

FIFTH.—At the time of transfer the search and certificate thereof above mentioned shall be continued by the Vendor to such time, and thereupon the purchase consideration may be paid by the Purchasers to the Vendor at the office of the Trust Company, and such payment shall be in full of the purchase obligations of the Purchasers hereunder. And upon said payment the said certificates of stock and blank transfers, abstracts and certificates of search, or such of them as the Purchasers may elect, shall be forthwith handed over to the Purchasers by the Trust Company, and the Vendor and Stockholders hereby jointly and severally covenant to do anything further which may be necessary on their part to complete the sale and to execute such legal covenants for ten years, and in such form as the Purchasers may require, not to engage in any way in the manufacture of or other like articles within ten years from the date hereof without the consent of the Purchasers.

SIXTH.—If the Purchasers fail to exercise the option, the Trust Company shall return to the Vendor the said certificates and blank transfers and abstracts and instruments, and the Purchasers shall pay all the charges of the Trust Company in connection with the matters aforesaid, and such Trust Company shall have no claim or lien whatsoever upon said certificates or abstracts or instruments or upon the Vendor for any of its said charge.

SEVENTH.—If said option is exercised, the Vendor shall take and accept in full payment for the property hereby agreed to be conveyed:

In such preferred stock of such	Company.....\$
In such common stock of such	Company.....\$

It is, however, distinctly understood that in case the Purchasers shall accept the stock so deposited, the cash in hand, credits and other property retained and not covered by this option, as well as the consideration above named, shall inure solely to the benefit of the Stockholders so depositing their stock, and not to the Purchasers or their assigns; subject, however, to the payment of all liabilities.

EIGHTH.—We, the undersigned Stockholders, owning respectively the number of shares of stock of said Company set opposite our several signatures, and no other, do hereby consent to and approve, ratify and confirm the proposed sale of property, business and good-will of said Company on the terms and conditions above set forth.

IN WITNESS WHEREOF, the Vendor and Stockholders have hereunto set their hands the day and year first above written.

SIGNATURE OF VENDOR AND STOCKHOLDERS.	RESIDENCE.	SHARES OF STOCK NOW HELD IN COMPANY.
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I, _____, Secretary of the Company, hereby certify that the foregoing consent of Stockholders is signed by the holders of all the capital stock of said _____ Company.

WITNESS my hand and corporate seal of said Company this day of _____ 19 .

[SEAL] _____ Secretary.

Form 6.

OPTION AGREEMENT.

THIS AGREEMENT, made at _____, this _____ day of _____, 19 _____, by and between _____ a corporation organized and doing business under and by virtue of the Laws of the State of _____, first party hereto and _____ of _____ the second party hereto, WITNESSETH,

FIRST.—For and in consideration of ten dollars (\$10), and other good and valuable considerations by the second party to the first party in hand paid, the receipt of which by the first party is hereby acknowledged, the first party hereby agrees, upon the request of the second party, provided such request be made to the first party on or before _____ 19 _____, to sell, convey, transfer, and deliver to the second party the following:

All of the real estate, buildings, improvements, appurtenances, easements, plant, machinery, fixed and movable, now belonging to the first party and located at _____, in the County of _____ and State of _____; also all the rail-

road tracks, furnaces, brick-work, foundations, boilers, pumps, water-heaters, engines, housings, chilled rolls, shears, cranes, annealing boxes and stands, castings, buggies, trucks, steam, gas and water pipes, water and acid tanks, storage tanks, spare parts of machinery, electric plant, cars, shafting, belting, pulleys, hangers, gears, tools, forges, horses, wagons, implements and utensils of every nature whatsoever, located on or within the above described premises, or any property of the character described above belonging to the party of the first part, which may be temporarily located elsewhere than on the above described premises, or for the purpose of making repairs, or for any other reason; intending hereby to include all property, machinery, material and supplies now being used for, or suitable to be used for, or in connection with the manufacture and shipment of _____, excepting the goods, material and supplies hereinafter mentioned; also, all of the good-will, trade-rights, trade-marks, brands, patents, inventions, formulas and recipes, trade-names and patents now owned or controlled by the first party. All of the foregoing property at the time of such sale to be free and clear from all liens, charges, incumbrances, taxes and assessments whatever.

The first party shall and will within ten (10) days after notice to that effect furnish and deliver to the second party for examination by its counsel full and complete abstracts of title to the said real estate.

SECOND.—The second party shall have and is hereby given the exclusive right and option to purchase of the first party all of the foregoing property on or before _____, 19____, for the consideration of _____ dollars, cash, to be paid by the second party to the first party at the time of the consummation of such purchase.

THIRD.—If, during the period of this contract, any part of the property hereinbefore described shall be destroyed or damaged by fire or other casualty, then and in that event, unless the property so destroyed or damaged shall be fully restored on or before the _____ day of _____, 19____, to the condition in which it was immediately preceding such destruction or damage, then to the extent of the loss resulting from such injury, the purchase price hereinbefore specified shall be abated. The extent of such loss, in case the parties hereto cannot agree upon the same, shall be ascertained and determined by appraisers in the manner hereinafter provided.

FOURTH.—At the time of the consummation of the sale and purchase of the property hereinbefore described the first party hereby agrees to sell and deliver, and the second party hereby agrees to purchase of the first party, in addition to the foregoing, the following:

(a) All of the [*manufactured product described in detail*] then

owned by the party of the first part, the price to be paid therefor to be the then market value thereof.

(b) All of the following described goods, materials and supplies located upon or within the above described premises, or in transit to the same, at their cost price to the party of the first part, to wit:

[*Crude materials described in detail.*]

(c) All unexpired fire, liability and other insurance policies then in force at the *pro rata* value of the same.

The price to be paid for the property specified in this paragraph shall be paid in cash contemporaneously with the payment of the sum specified in paragraph "Second" hereof.

FIFTH.—In case of the consummation of the purchase of the property covered by this contract, then contemporaneously therewith the second party shall assume all *bona fide* contracts made by the first party for the purchase or sale of materials, raw or manufactured.

SIXTH.—In case of the purchase of the property covered by this contract, then contemporaneously therewith the first party shall cause to be properly executed by itself and by all of its officers a contract or contracts with the second party, by which the first party and such officers shall obligate themselves for a period of fifteen years after the consummation of such purchase not to engage or be or become interested, directly or indirectly, as individuals, partners, stockholders, directors, officers, clerks, agents or employees in the business (other than that of transferee hereunder of the second party) of buying, manufacturing or selling

or any kindred products or any of the by-products of a factory within a radius of _____ miles of the City of _____

SEVENTH.—The first party hereby agrees in case of the consummation of the purchase of the property embraced in this contract that it will forthwith, upon demand of the second party, execute or cause to be executed by the first party and all its officers such further instrument or instruments as may be required by the second party for the purpose of carrying out the purposes and provisions of this agreement.

EIGHTH.—In case any difference of opinion shall arise by and between the parties hereto in the interpretation and carrying out of this instrument, or any of its provisions, then and in that event such difference shall be determined by three appraisers; each of the parties hereto to appoint one appraiser, and the other two so chosen to select a third appraiser. The award of a majority of such appraisers shall be binding and conclusive upon the parties hereto; the appointment of such appraisers by the respective parties hereto shall be made by each of said parties within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the parties hereto to appoint such appraiser shall authorize the other of said parties to make an appointment for the one so in default. The

IN WITNESS WHEREOF, the party of the first part has duly caused this instrument to be signed and sealed by its proper officers and attested under its corporate seal, the day, date and place first above written.

OPTION FOR THE ACQUIREMENT OF PROPERTIES WITHOUT THE PAYMENT OF MONEY BUT FOR A STOCK CONSIDERATION. PRICE TO BE FIXED BY ARBITRATORS.

The consideration to be received by the vendor, if this option is

exercised, shall be an amount to be determined in accordance with the provisions of said Exhibit A, in the preferred and common stock of the new company.

The vendor agrees to deposit in such depositary in the City of New York as may be nominated by the purchaser and approved by the arbitrators or appraisers named in Exhibit A, within ten days after notice in writing from the purchaser, proper deeds, bills of sale, and assignments or other instruments of transfer for the conveyance, transfer and delivery to the new company of good title, free and clear of all indebtedness, to the entire plant, property, patents, bills and accounts receivable, business and good will of the vendor, as of the day of , 19 , such deeds, bills of sale and other instruments of transfer to be delivered by the depositary to the new company without other or further authority or direction by the vendor in case this option is exercised on or prior to the day of , 19 , upon delivery by the purchaser to such depositary, for account of the vendor, of the shares of stock, preferred and common, of the new company which the vendor is to receive as above set forth.

This option shall not be exercised unless simultaneously with the exercise thereof the new company shall acquire the property or a majority of the capital stock of at least five of the companies named in Exhibit A.

The vendor agrees that the depositary shall retain out of the stock delivered to it for account of the vendor hereunder an amount of the preferred stock of the new company, together with a like amount of common stock of the new company at par, equal to per cent. of the amount of accounts and bills receivable transferred pursuant hereto, to be held by it as security for the payment of such accounts and bills receivable until the proceeds thereof are received by the new company, and in case such accounts and bills receivable do not realize the full amount of their appraised value, the depositary shall sell all or any part of the preferred and common stock so held as security in such manner as shall be requested by the new company, delivering the proceeds after deducting the expenses of sale to the new company to the amount of such deficiency and deliver the surplus, if any, to the vendor.

It is understood that in case this option is exercised the business of the vendor from the day of , 19 , until the date of transfer, shall be deemed to have been conducted for the account and at the risk of the new company.

The vendor agrees, at the request of the purchaser, to permit to examine and inspect any and all of the property, books and papers of the vendor, and agrees to furnish to any and all information it may desire about the property, assets, business, profits and cost of operating the business of the vendor.

IN WITNESS WHEREOF the vendor and the purchaser have

executed this instrument the day and year above written, and all of the stockholders of the vendor have executed the annexed consent.

COMPANY.

By

President.

Attest:

Secretary.

We, the undersigned, stockholders of _____ Company, hereby request the Board of Directors to authorize the execution of the foregoing option, and hereby assent to the sale and transfer therein provided for.

NAME	ADDRESS.	NUMBER OF SHARES.
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EXHIBIT A.

The proposed corporation shall be organized under the Laws of New Jersey, or such state as may be hereafter determined by the purchaser, under advice of counsel, to be called the

or such other name as may be hereafter determined, to acquire the properties, or shares of capital stock representing the same, of at least five of the following named companies:

and of such other companies, if any, as the arbitrators or appraisers may determine.

The new company shall issue six per cent. (6%) cumulative preferred stock and such an amount of common stock (not, however, less in amount than the preferred stock) as the arbitrators or appraisers hereinafter named shall determine for the purposes and on the terms below set forth.

The preferred stock shall be issued in payment for each property, or the shares of capital stock representing the same, to an amount which at par shall represent the value of the plant, machinery, stock and material on hand, raw, manufactured and in process, bills and accounts receivable, cash and other tangible assets acquired, the value of such assets to be determined by an appraisal to be made by or under the direction of _____ as arbitrators or appraisers.

The common stock shall be issued to such amount as shall be determined by the purchaser, with the approval of the arbitrators or appraisers, to represent patents, trade-marks, good will, past earning capacity and estimated increased earning capacity by reason of consolidation and for such other matters as in the judgment of the arbitrators or appraisers enter into the value of the properties acquired.

Twenty-five per cent. (25%) of the common stock shall be distributed among the vendors of the acquired properties proportionately to the amount of preferred stock received by each such vendor.

Twenty-five per cent. (25%) of the common stock shall be issued to or upon the order of _____ to cover the expenses (other than cash disbursements which shall not exceed _____), of organization and acquisition of the properties, the compensation of the purchaser, the appraisers, bankers, counsel, depositary and accountants.

The remaining fifty per cent. (50%) of the common stock shall be distributed among the vendors in such proportion as shall be determined by the arbitrators or appraisers in their sole and uncontrolled discretion, having in view the considerations for which the common stock issues, as above set forth.

All of the certificates for shares of common stock of the new company, except sufficient to qualify directors, shall for the period of one year remain on deposit with a depositary, which shall issue to the owners proper certificates representing the same. The purchaser, with the approval of the arbitrators or appraisers, shall appoint the depositary and determine the form of the certificates to be issued by it.

In case of the death, incapacity or refusal to act of any of the arbitrators or appraisers, the remaining arbitrators or appraisers shall fill the vacancy so occurring by the appointment of some disinterested person, who shall act to the same effect as if he were named herein as one of the arbitrators or appraisers.

All decisions of the arbitrators or appraisers shall be in writing and shall be unanimous, and shall be final and conclusive.

THE CERTIFICATE OF INCORPORATION.

Form 8.

[Section 8, p. 34, *ante.*]

SHORT FORM OF CERTIFICATE.

THIS IS TO CERTIFY, that the undersigned do hereby associate themselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

FIRST.—The name of the corporation is (*Name in full*).

SECOND.—The location of the principal office in this State is at No. _____ street, in the _____ of _____ county of _____

The name of the statutory agent therein and in charge thereof, upon whom process against this corporation may be served is

THIRD.—The objects for which this corporation is formed are (State objects in detail; see *Specific Object Clauses*. Add selection of general clauses suitable in connection therewith; see forms 260-298).

The corporation shall have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in the State of New Jersey, and as well in all other states, and in all foreign countries, and especially in

FOURTH.—The total authorized capital stock of this corporation is dollars, divided into shares of the par value of dollars each. [If preferred stock is to be authorized add: Of said stock shares are to be preferred stock, and shares are to be common stock. Then add preference clauses—pp. 516-567.]

FIFTH.—The names and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which the company will commence business are as follows: [The capital stock with which the company will commence business should be not less than \$1,000 (Sec. 8, subdiv. IV) and should not be more than two-thirds preferred stock. See section 18.]

NAME.	POST-OFFICE ADDRESS.	NUMBER OF SHARES.
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SIXTH.—(Insert clauses for the regulation of the business and for the conduct of the affairs of the corporation, and creating, refining, limiting and regulating the powers of the corporation, the directors and the stockholders; or any class or classes of stockholders; see p. 504 et seq.)

SEVENTH.—(If the duration of the company is limited add): The period of existence of this company is limited to years.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day of , A. D. 19 .

Signed, sealed and delivered }
in the presence of }

CERTIFICATE OF INCORPORATION.

Form 9.

[Sections 9, 170, *et seq.*, *ante.*]

ACKNOWLEDGMENT.

STATE OF
COUNTY OF

} ss.

BE IT REMEMBERED, that on this day of , A. D. 19 , before me, a personally appeared who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Form 10.

[Sections 9, 170, *et seq.*, *ante.*]

PROOF BY SUBSCRIBING WITNESS.

STATE OF
COUNTY OF

} ss.

BE IT REMEMBERED, that on this day of , A. D. 19 , before me, the subscriber, personally appeared , who, being by me duly sworn, on his oath did depose and say, that he saw (*insert names of incorporators*), the persons named in the foregoing certificate, sign, seal and deliver the same as their voluntary act and deed, and that the deponent at the same time subscribed his name thereto as a witness of the execution thereof.

Subscribed and sworn to before me)
the day and year aforesaid, }

[If acknowledgment is taken or proof is made before an officer (other than a master in chancery or commissioner of deeds for New Jersey) outside of New Jersey add certificate p. 45, *ante.*]

Form 11.

FULLER FORM OF CERTIFICATE OF INCORPORATION.

(Section 8, p. 34, *ante.*)

THE

COMPANY,

CERTIFICATE OF INCORPORATION.

ARTICLE I.—The corporate name is

OBJECTS—PRINCIPAL.

ARTICLE II.—The objects for which the corporation is established

are: (*state principal objects in full; see forms of Specific Object Clauses, pp. 383-501.*)

OBJECTS—SUBSIDIARY.

To purchase or otherwise acquire, sell, dispose of and deal in real and personal property of all kinds, and in particular lands, buildings, business concerns and undertakings, mortgages, shares, stocks, debentures, securities, concessions, produce, policies, book debts and claims, and any interest in real or personal property, and any claims against such property, or against any person or company, and to carry on any business, concern or undertaking so acquired.

To enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

To issue bonds, debentures or obligations of the company from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage, pledge, deed of trust or otherwise.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes, trade-marks and trade names, relating to or useful in connection with any business of the corporation.

To purchase, hold and re-issue the shares of its capital stock.

To the extent and in the manner permitted by local laws to conduct business in any of the States, Territories, colonies or dependencies of the United States, in the District of Columbia, and in any and all foreign countries, to have one or more offices therein, and therein to hold, purchase, mortgage and convey real and personal property.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

In general to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and to exercise all the powers conferred by the laws of New Jersey upon corporations formed under the act hereinafter referred to.

CAPITAL AUTHORIZED.

ARTICLE III.—The corporation is authorized to issue capital stock to the extent of dollars (\$), divided into shares of the par value of dollars (\$) each.

PREFERRED STOCK CLAUSES.

[*Where more than one class of stock is desired, add cumulative or non-cumulative preferred stock clauses. (For forms see pp. 516 et seq.)*]

REGULATIONS AND LIMITATIONS.

ARTICLE IV.—In furtherance and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

To hold their meetings, to have one or more offices, and to keep the books of the company within or without the State of New Jersey, at such places as may be from time to time designated by them; but the company shall always keep at its registered office in New Jersey a transfer book in which the transfers of stock can be made, entered and registered, and also a stock book containing the names and addresses of the stockholders, and the number of shares held by them respectively, which shall be at all times during business hours open to the inspection of the registered stockholders in person.

To determine from time to time whether, and, if allowed, under what conditions and regulations the accounts and books of the company (other than the stock and transfer books), or any of them, shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted or limited accordingly.

To make, alter, amend and rescind the by-laws of the company, to fix the amount to be reserved as working capital, to fix the times for the declaration and payment of dividends, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided, always, that a majority of the whole board concur therein.

With the consent in writing and pursuant also to the affirmative vote of the holders of a majority of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided, always, that a majority of the whole board concur therein.

By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws to designate two or more of their number to constitute an executive committee, which committee shall, for the time being, as provided in said resolution, or in the by-laws, have and exercise any or all the powers of the board of directors, which may be lawfully delegated in the management of the business and affairs of the company, and shall have power to authorize the seal of the company to be affixed to all papers which may require it.

The board of directors and the executive committee shall, except as otherwise provided by law, have power to act in the following manner:

A resolution in writing, signed by all the members of the board of directors or executive committee, shall be deemed to be action by such board or executive committee, as the case may be, to the effect therein expressed, with the same force and effect as if the same had been duly passed by the same vote at a duly convened meeting, and it shall be

the duty of the secretary of the company to record such resolution in the minute book of the company under its proper date.

The company may use and apply its surplus earnings or accumulated profits to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner, and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the board of directors.

Subject to the foregoing provisions, the by-laws may prescribe the number of directors to constitute a quorum at their meetings, and such number may be less than a majority of the whole number.

The company reserves the right to amend, alter, change or repeal any provision contained in this certificate in the manner now or hereafter prescribed by statute for the amendment of the certificate of incorporation.

REGISTERED OFFICE.

ARTICLE V.—The registered office of the company is (the same being also the post office address of the subscribing incorporators), No. 525 Main street, East Orange, New Jersey, and the New Jersey Registration & Trust Company is designated as the statutory agent therein, in charge thereof, and upon whom process against this company may be served.

ARTICLE VI.*—The capital stock with which the company begins business is subscribed by the undersigned incorporators, severally, according to the number of shares set opposite their respective names.

Pursuant to an Act of the Legislature of New Jersey entitled “An Act Concerning Corporations (Revision of 1896),” and the acts amendatory thereof and supplemental thereto, for the purpose of forming a corporation thereunder of unlimited duration, to do business, both within and without the State of New Jersey, the undersigned have signed this certificate and affixed their seals hereto.

NAMES.	NO. OF SHARES TAKEN BY EACH SUBSCRIBER.	AMOUNT.
[L. S.]		\$
[L. S.]		
[L. S.]		_____
Amount with which the company will begin business:		\$

Witness to the foregoing signatures:

(Add acknowledgment.)

[For *non-cumulative* preferred stock, use (1) and (2). For *cumulative* preferred stock use (1) and (3).]

(1) Of said capital stock shares shall be preferred stock, and the balance shares shall be common stock.

* See note to ¶ Fifth, p. 349.

NON-CUMULATIVE PREFERRED STOCK.

(2) The preferred stock may be issued as and when the board of directors shall determine, and shall entitle the holders thereof to receive out of the surplus or net earnings of each fiscal year, and the corporation shall be bound to pay thereon, as and when declared by the board of directors, a non-cumulative dividend at the rate of but never exceeding per centum per annum,* payable yearly, half-yearly, or quarterly, before any dividend shall be set apart or paid on the common stock for such year; the remainder of the surplus or net earnings may, in the discretion of the board of directors, be distributed as dividends among the holders of the common stock, as and when the board shall determine.

In case of liquidation or dissolution or distribution of assets of the corporation, the holders of preferred stock shall be paid the par amount of their preferred shares before any amount shall be payable to the holders of the common stock; and after the payment of the par amount of the common stock to the holders thereof, the balance of the assets and funds shall be distributed ratably among all the shareholders, without preference.

(a) The preferred shares may, by vote of a majority of the board of directors, be redeemed at any time after three years from their issue, at the price of \$ per share.

(b) All or any of the rights and privileges attached to the preferred and common stock, respectively, may be modified by a certificate of amendment authorized and filed in the manner provided by Section 27 of "An Act Concerning Corporations (Revision of 1896)," for the alteration or amendment of the certificate of incorporation.

CUMULATIVE PREFERRED STOCK.

(3) The preferred stock may be issued as and when the board of directors shall determine, and shall entitle the holders thereof to receive out of the surplus or net earnings, and the corporation shall be bound to pay thereon, as and when declared by the board of directors, a dividend at the rate of but never exceeding per centum per annum cumulative from and after the day of , 19 , payable yearly, half-yearly, or quarterly, before any dividend shall be set apart or paid on the common stock; provided, however, that whenever a dividend is paid on the preferred stock and all prior dividends thereon have been paid, the directors shall, if in their judgment the surplus or net profits, after deducting the amount of dividends to accrue on the preferred stock during the current year, shall be sufficient for such purpose, have power then or thereafter to declare and pay a dividend on the common stock.

In case of liquidation or dissolution or distribution of assets of

* Fixed dividends on preferred stock must not exceed 8%. See Sec. 18, *ante*.

the corporation, the holders of preferred stock shall be paid the par amount of their preferred shares and the amount of dividends accumulated and unpaid thereon before any amount shall be payable to the holders of the common stock; and after the payment of the par amount of the common stock to the holders thereof, the balance of the assets and funds shall be distributed ratably among all the shareholders, without preference.

(Add redemption clause (a) p. 354.)

(Add modification of rights clause (b) as above.)

SELECTED FORMS OF CERTIFICATES OF INCORPORATION.

Form 12.

CERTIFICATE OF INCORPORATION OF THE CARNEGIE COMPANY.

ARTICLE I.—The corporate name is the CARNEGIE COMPANY.

ARTICLE II.—The objects for which the corporation is established are:

To mine, prepare for market, market and transport coal, iron, steel and all mineral substances.

To manufacture, buy, sell, deal in and deal with iron, steel and all other metals and metallic compounds, coke and coal, and all the products and by-products thereof.

To promote, construct, provide, acquire, carry out, maintain, improve, manage, develop, control, take on lease or agreement, sell, lease, let license to use, work, use and dispose of any roads, sidings, railways (outside of New Jersey), pipe lines, quays, wharves, docks, bridges, reservoirs, canals, watercourses, hydraulic works, gas works, gas wells, electrical works, mills, factories, furnaces, warehouses, shops, buildings, dwellings for employees and others and all other works and conveniences.

To construct, lease, own, operate or sell transportation line or lines, by land or water, in any state or country, subject to the laws of such state or country, either directly or through the ownership of stock of any corporation.

The company shall have express power to hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock, bonds, debentures or other evidences of indebtedness created by any other corporation or corporations, and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

As subsidiary objects and powers the company may:

Manufacture, purchase or otherwise acquire goods, wares, merchandise and personal property of every class and description, and hold,

own, sell or otherwise dispose of, trade, deal in and deal with the same.

Acquire and undertake the good will, property, rights, franchises and assets of every kind, and the liabilities of any person, firm, association or corporation, either wholly or partly, and pay for the same in cash, stock or bonds of the company, or otherwise.

Enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal, or body politic, and with the government of the United States, or any state, territory, or colony thereof, or any foreign government; purchase, lease, or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient in the judgment of the directors for any of the purposes of its business. /

Issue warrants, bonds, debentures and other negotiable or transferable instruments, secured by mortgage, or otherwise, for such amounts as shall from time to time seem advisable.

Guarantee the payment of dividends, or interest, or any shares of stock, bonds, debentures or other securities or obligations of this, or any other company, whenever, in the judgment of the board of directors, proper or necessary for the business of the company.

Apply for, obtain, register, purchase, or otherwise acquire and hold, own, use, operate, introduce and sell, assign or otherwise dispose of any and all trade-marks, formulæ, secret processes, trade names, and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent or otherwise, of the United States or of any other country, and any governmental grants or concessions; and use, exercise, develop, grant licenses in respect of, or otherwise turn to account any and all such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired.

If, and to the extent permitted by the local laws of each state and foreign country where the property may be situated, and subject always to such local laws, the company may cause or allow the legal title, estate and interest in any property or business acquired, established or carried on by the company to remain or be vested, or registered in the name of or carried on by an individual, or by any other company or companies, foreign or domestic, formed or to be formed, and either upon trust for, or as agents or nominees of this company, or upon any other terms or conditions which the board of directors may consider for the benefit of this company, and manage the affairs, or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks or other securities thereof, or otherwise howsoever, and exercise all or any of the powers of holders of shares, stocks or securities thereof, and receive and distribute as profits the dividends and interest on such shares, stocks and securities. /

Conduct business, have one or more offices, and purchase, mort-

gage, lease and convey real and personal property, or any estate or interest therein, in any part of the world, but always subject to the local laws.

Subject to the provisions of law, the company may purchase or otherwise acquire, hold and re-issue the shares of its capital stock.

IN GENERAL, but in connection with the foregoing, the company may carry on any other business, whether manufacturing or mining, or otherwise, and have and exercise all the powers conferred by the laws of New Jersey upon corporations formed under the act hereinafter referred to; it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the company.

ARTICLE III.—The company shall be authorized to issue capital stock to the extent of one hundred and sixty million dollars (\$160,000,000) divided into shares of the par value of one thousand dollars each.

ARTICLE IV.—In furtherance, and not in limitation of the powers conferred by statute, the board of directors are expressly authorized:

(1) To hold their meetings, to have one or more offices, and to keep the books of the company within or without the state of New Jersey, at such places as may be from time to time designated by them; but the company shall always keep at its principal and registered office in New Jersey a transfer book in which the transfers of stock can be made, entered and registered, and also a stock book containing the names and addresses of the stockholders, and the number of shares held by them respectively, which said transfer book and stock book shall be at all times during business hours open to the inspection of the stockholders in person.

(2) To determine from time to time whether, and, if allowed, when and under what conditions and regulations, the accounts and books of the company (other than the stock and transfer books), or any of them, shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted or limited accordingly.

(3) To make, alter, amend and rescind the by-laws of this company, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided always, that a majority of the whole board concur therein.

(4) With the consent in writing and pursuant also to the affirmative vote of the holders of a majority of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer, or otherwise dispose of the property of the company as an entirety, provided always, that a majority of the whole board concur therein.

(5) By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws, to designate two or more of their number to constitute an executive committee, which committee

shall for the time being, as provided in said resolution, or in the by-laws, have and exercise, all the powers of the board of directors which may be lawfully delegated in the management of the business and affairs of the company, and shall have power to authorize the seal of the company to be affixed to all papers which may require it.

The company may use and apply its surplus earnings or accumulated profits authorized by law to be reserved to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner, and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the company, shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the board of directors, or a majority of the stockholders.

ARTICLE V.—The principal and registered office of the company is at No. 525 Main Street, East Orange, New Jersey; and the New Jersey Registration & Trust Company is designated as the agent therein, in charge thereof, and upon whom process against this company may be served.

IN ACCORDANCE with an Act of the Legislature of the State of New Jersey, entitled “An Act Concerning Corporations (Revision of 1896), and the acts amendatory thereof and supplemental thereto, for the purpose of forming a corporation of unlimited duration to do business both within and without the State of New Jersey, the undersigned do respectively subscribe for the capital stock with which the company will begin business, amounting to one hundred and sixty million dollars (\$160,000,000), and do agree to take the number of shares set opposite our respective names and have accordingly signed this certificate and affixed our seals hereto.

[Here follow the names, post-office addresses and number of shares taken by each subscriber.]

[Acknowledgments of the subscribers.]

Form 13.

**CERTIFICATE OF AMENDMENT OF ORIGINAL CERTIFICATE
OF INCORPORATION OF THE UNITED STATES
STEEL CORPORATION.**

UNITED STATES STEEL CORPORATION, a corporation of the State of New Jersey, and the President and the Secretary of said company, do hereby certify as follows:

1. [Here follows the location of the principal office in New Jersey, and the name of the agent therein and in charge thereof.]

2. The total authorized capital stock of said corporation, as set forth in its original certificate of incorporation, is \$3,000, divided into 30

shares of the par value of \$100 each, of which 15 shares of the aggregate par value of \$1,500 are to be preferred stock, and 15 shares of the aggregate par value of \$1,500 are to be common stock. Such total authorized capital stock, consisting of 15 shares of the preferred stock and 15 shares of the common stock, of the aggregate par value of \$3,000 was subscribed for by the incorporators as set forth in the said original certificate of incorporation.

3. The board of directors of said corporation, at a meeting of said board duly held, passed a resolution declaring that the changes and amendments hereinafter set forth are advisable, and calling a meeting of the stockholders to take action thereon.

4. Such meeting of the stockholders was thereupon duly held pursuant to such call of the board of directors, upon notice given to each stockholder as provided in the by-laws. At said meeting all of the incorporators and stockholders of said corporation were personally present, and more than two-thirds in interest of each class of the stockholders having voting power—namely, all of the incorporators and all of the stockholders of said corporation—voted in favor of such changes and amendments, which were accordingly adopted. Such changes and amendments are as follows:

A. That Article IV of the certificate of incorporation of said company be amended so as to read as follows:

IV. The total authorized capital stock of the corporation is eleven hundred million dollars (\$1,100,000,000), divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be preferred stock, and five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be common stock.

From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that if in any year dividends amounting to seven per cent. shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared, and the company shall have paid such cumulative divi-

dends for previous years and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

And that the capital stock of said company be increased accordingly to \$1,100,000,000, divided into 11,000,000 shares of the par value of \$100 each, of which amount 5,500,000 shares amounting to \$550,000,000 shall be preferred stock, with the rights and preferences aforesaid, and 5,500,000 shares amounting to \$550,000,000 shall be common stock.

B. That the fifth paragraph of Article VII of the said certificate of incorporation be amended so as to read as follows:

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the board of directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the Act concerning corporations (Revision of 1896) any action which theretofore required the consent of the holders of two-thirds of the stock, at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

C. That the certificate of incorporation of said United States Steel Corporation, as amended, shall read as follows:

AMENDED
CERTIFICATE OF INCORPORATION
OF
UNITED STATES STEEL CORPORATION.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the

Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

I. The name of the corporation is

UNITED STATES STEEL CORPORATION.

II. [Here follows the location of the principal office in New Jersey, and the name of the agent therein and in charge thereof.]

III. The objects for which the corporation is formed are:

To manufacture iron, steel, manganese, coke, copper, lumber and other materials, and all or any articles consisting, or partly consisting of iron, steel, copper, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron, manganese, stone or other ores, or oil, and any wood lands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, water-works, gas works and electric works, viaducts, aqueducts, canals and other water-ways, and any other means of transportation, and to sell the same, or otherwise to dispose thereof, or to maintain and operate the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of any trade-marks, trade-names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the state of New Jersey.

To acquire by purchase, subscription or otherwise, and to hold or to

dispose of, stocks, bonds or any other obligations of any corporation formed for, or then or theretofore engaged in or pursuing, any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell or dispose of, any stock, bonds or other obligations of any such other corporation; to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds or other obligations, or to do any acts or things designed for any such purpose; and, while owner of any such stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other states, and in the territories, and in foreign countries, and may have one office, or more than one office, and keep the books of the company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property, either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation. it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends, or bonds, or contracts, or other obligations; to make and perform contracts of any kind and description and in carrying on its business, or for the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a copartnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

IV. The total authorized capital stock of the corporation is eleven hundred million dollars (\$1,100,000,000), divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be preferred stock, and five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be common stock.

From time to time, the preferred stock and the common stock may be increased according to law and may be issued in such amounts

and proportions as shall be determined by the board of directors, and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent. shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years, and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares, and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

V. The names and post-office addresses of the incorporators, and the number of shares of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions being three thousand dollars, is the amount of capital stock with which the corporation will commence business) are as follows:

[Here follow the names and post-office addresses of each of the incorporators, and the numbers of shares of stock subscribed for by each.]

VI. The duration of the corporation shall be perpetual.

VII. The number of directors of the company shall be fixed from time to time by the by-laws; but the number if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class

for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of the directors may be increased as may be provided in the by-laws. In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws by the directors or by the stockholders at an annual or special meeting; and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the board of directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the Act concerning corporations (Revision of 1896); any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after due notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors.

Any other officer or employee of the company may be removed at

any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and, to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The board of directors may appoint not only other officers of the company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer and of the secretary respectively.

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the company's capital stock as provided by law.*

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholders shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting,

* See page 129, *ante*.

CERTIFICATE OF INCORPORATION.

or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 23d day of February, 1901.

(Signatures of Incorporators.)

[Acknowledgment.]

5. The written assent and signatures of all the incorporators and stockholders of said United States Steel Corporation to the foregoing amendments and changes are hereto appended.

IN WITNESS WHEREOF, the said United States Steel Corporation has caused this certificate to be signed by its President, and its Secretary, and its corporate seal to be hereto affixed, this first day of April, 1901.

[Signatures of President and Secretary, and corporate seal.]

[Acknowledgment.]

We, the undersigned, being all the incorporators and stockholders of the United States Steel Corporation, having at a meeting regularly called for that purpose, voted in favor of the changes and amendments set forth in the above certificate, do now, pursuant to law, hereby give our written consent to the said changes and alterations.

Witness our hands this 1st day of April, A. D. 1901.

[Here follow signatures of incorporators and stockholders.]

[Acknowledgment.]

Form 14.

AMENDED CERTIFICATE OF ORGANIZATION

OF THE

INTERNATIONAL MERCANTILE MARINE COMPANY,

UNDER THE LAWS OF THE STATE OF NEW JERSEY.

Filed October 1, 1902.

KNOW ALL MEN BY THESE PRESENTS, that we (*here follows the recitation of the names of the incorporators*), do hereby associate ourselves into a company under and by virtue of the provisions of the act of the Legislature of the state of New Jersey, entitled "An Act Concerning Corporations," approved April 7, A. D. 1875, and the several acts amendatory thereof and supplementary thereto, for the purposes hereinafter mentioned, and we do hereby and to that end make, acknowledge and file this certificate, and we do hereby certify and set forth:

FIRST, That the name assumed for designating the company and to be used in its business and dealings is "INTERNATIONAL MERCANTILE MARINE COMPANY."

SECOND. That the place in this state where the principal part of the business of such company within this state is to be conducted and

transacted is Jersey City, in the county of Hudson; and the states and countries out of this state where the company proposes to carry on portions of its business and transactions are the states of New York and Pennsylvania, and all the other states and territories of the United States, and the countries of the United Kingdom of Great Britain and Ireland, and all the countries of Europe; and such other places and countries as the business of the company may require.

That the objects for which this company is formed are the transportation for hire of passengers and mails, goods, wares, merchandise, animals and other property and materials of all kinds and nature whatsoever, to, from and between the various cities, towns and ports of the world, by means of steam or sailing vessels; the purchase, owning, chartering and employment of steam and other vessels, and the purchase, owning and holding of shares or portions of such steam or other vessels, and of the stock, bonds and other securities of corporations of this and other states and countries; to purchase, lease, acquire and hold such real estate, buildings, warehouses, wharves, piers and easements situate either in the United States or abroad, as may be advantageous for carrying on its business; to acquire, hold and employ such lighters, steam tugs and shares of incorporated companies owning the same as may be necessary in the said business, in the ports of the United States and in foreign ports; to issue bonds or other evidences of indebtedness; to mortgage the corporate franchises, the real and personal property of the company, the vessels and steamships owned by it, the incomes and profits accruing to it, and the stock, bonds and other securities of other corporations or companies owned by it, to secure the payment of any or all of its bonds or other evidences of indebtedness, in whole or in part, by such mortgage or mortgages, and to sell and dispose of any property, real or personal, acquired by the said company. The portion of the business of the company which is to be carried on out of this state is the transaction of a general transportation business, in the carrying for hire of passengers and mails, goods, wares, merchandise, animals and other property and materials of all kinds and nature whatsoever, upon steamships and other vessels to, from and between the various ports of the world, particularly between the ports of New York and Philadelphia and the ports of Southampton, Liverpool, Antwerp and other ports of Europe, and the procuring of contracts for, and the making of contracts for the employment and freighting of the same, and to carry on all the business, and to possess and exercise any and all of the rights, powers and privileges above specified.

THIRD. That the company may have offices or agencies in the United States and in foreign countries.

FOURTH. That the amount of the total authorized capital stock of the company is one hundred and twenty million dollars (\$120,000,000), divided into one million two hundred thousand (1,200,000) shares of the par value of one hundred dollars (\$100) each, of which six hundred

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and, in its discretion, the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock,* to such extent and in such manner and upon such terms as the board of directors shall deem expedient.

The board of directors from time to time shall determine whether and to what extent, and at what times and places and under what conditions and regulations the accounts and books of the company, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the company, except as conferred by statute or authorized by the board of directors or by a resolution of the stockholders.

The board of directors may make by-laws, and from time to time may alter, amend or repeal any of them; but any by-law made by the board of directors may be altered or repealed by the stockholders at any annual meeting or at any special meeting, provided notice of such proposed alteration or repeal shall be included in the notice of such meeting.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this thirty-first day of May, Anno Domini One thousand eight hundred and ninety-three (1893).

Signed, sealed and delivered
in the presence of

}

(Here follow the signatures of the incorporators and the acknowledgments for 1893.)

(Here follows a recitation of the directors' resolution recommending the changes and authorizing a meeting of the stockholders, of the stockholders' meeting and the recital that more than two-thirds in interest of each class of stock voted in favor of amendment.)

IN WITNESS WHEREOF, the said INTERNATIONAL NAVIGATION COMPANY, whose name is so to be changed to INTERNATIONAL MERCANTILE MARINE COMPANY, has caused this certificate to be signed by its president and its secretary, and its corporate seal to be hereunto affixed, this twenty-second day of September, 1902.

[SEAL] INTERNATIONAL NAVIGATION COMPANY.
INTERNATIONAL MERCANTILE MARINE COMPANY.

(Here follow the signatures of the president and secretary.)
(Witnessed.)

(Here follows the assent of the stockholders to the amendment,

* See page 129, *ante*.

giving the names of the stockholders, but not the number of shares held by them respectively.)

(Then follow the acknowledgments of the officers, the proof of the corporate execution by the president and secretary, and of the fact that the stockholders therein named hold all of the stock of the company, the same being certified by the oath of the secretary.)

Form 15.

CERTIFICATE OF INCORPORATION OF THE NORTHERN
SECURITIES COMPANY.

STATE OF NEW JERSEY, ss.:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

FIRST.—The name of the corporation is

"NORTHERN SECURITIES COMPANY."

SECOND.—(Here follows the name of the principal office and agent in New Jersey.)

THIRD.—the objects for which the corporation is formed are:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey or of any other state, territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other state, territory or country, and while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise to dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other state, territory or country, and while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds, or other securities or evidences of indebtedness or stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

(5) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other states and in foreign countries, and to have one or more offices out of this state, and to hold, purchase, mortgage and convey real and personal property out of this state.

FOURTH.—The total authorized capital stock of the corporation is four hundred million dollars (\$400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars (\$100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

FIFTH.—The names and post office addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

(Here follow the names and residences of the subscribers to the stock to the extent of \$30,000.)

SIXTH.—The duration of the corporation shall be perpetual.

SEVENTH.—The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors, the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the

term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the 17th section of the Act concerning corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employee of the corporation may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws, or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation; to determine whether any, and, if any, what part of any, accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations,

or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.*

The board of directors from time to time shall determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the board of directors, or by a resolution of the stockholders.

The board of directors may make by-laws, and from time to time may alter, amend or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF we have hereunto set our hands and seals, the twelfth day of November, 1901.

(Here follow the signatures of the three incorporators and acknowledgments.)

Form 16.

CERTIFICATE OF INCORPORATION OF THE PENNSYLVANIA
STEEL COMPANY.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows:

I. The name of the corporation is

PENNSYLVANIA STEEL COMPANY.

II. (Here follows the name of the principal office and agent in New Jersey.)

III. The objects for which and for any of which the corporation is formed are:

To manufacture iron, steel, manganese, copper, and other metals

* See page 129, *ante*.

or alloys thereof, coke, gas, lumber, and other materials, and all or any articles consisting, or partly consisting, of iron, steel, copper, or other metals, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing ores of iron, manganese, or other metals, stone, coal, or oil, and any wood lands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone, and other minerals and timber from any lands owned, acquired, leased, or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, gas, wood, lumber and other materials, or other merchandise, and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, houses, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, gas works and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation, and to sell the same, or otherwise to dispose thereof, or to maintain and operate the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of, any trade-marks, trade names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To engage in any other manufacturing, mining, merchant, construction or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To acquire by purchase, subscription or otherwise, and to hold or to dispose of, stocks, bonds, or any other obligations of any corporation formed for, or then or theretofore engaged in or pursuing any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation.

To acquire and undertake all or any part of the business, assets and liabilities of any person, firm, association or corporation.

To hold for investment, or otherwise to use, sell or dispose of, any stock, bonds, or other obligations of any such other corporation; to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the company, and to do any other act or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds, or other obligations, or to do any acts or things designed for any such purpose; and, while owner of any such stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other states, territories and possessions of the United States, and in foreign countries, and may have one office, or more than one office, and keep the books of the company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property, either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations, and shares of its capital stock, in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends, or bonds, or contracts, or other obligations; to make and perform contracts of any kind or description, and in carrying on its business, or for the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a copartnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

IV. The total authorized capital stock of the corporation is fifty million dollars (\$50,000,000), divided into five hundred thousand shares of the par value of one hundred dollars each. Of such total authorized capital stock two hundred and fifty thousand shares, amounting to twenty-five million dollars, shall be preferred stock, and two hundred and fifty thousand shares, amounting to twenty-five million dollars, shall be common stock.

From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors, and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the cor-

poration, yearly non-cumulative dividends at the rate of seven per centum per annum, and no more, payable semi-annually on dates to be fixed by the by-laws. The dividends on the preferred stock shall be payable before any dividend on the common stock shall be paid or set apart.

The common stock shall be subject to the prior rights of the holders of the preferred stock as herein declared, and shall be entitled to such dividends as the board of directors may declare, only out of any surplus or net profits remaining after the payment of the full dividends for any fiscal year on the preferred stock, or after there shall have been set aside from the surplus or net profits a sum sufficient for the payment of full dividends on the preferred stock for such fiscal year.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par amount of their shares, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

V. The names and post-office addresses of the incorporators, and the number of shares of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions being three thousand dollars, is the amount of capital stock with which the corporation will commence business), are as follows:

[Here follow the name, address and number of shares subscribed by each incorporator.]

VI. The duration of the corporation shall be perpetual.

VII. The number of directors of the company shall be not less than nine nor more than fifteen, as the board shall from time to time fix and determine. Whenever the number of directors shall be increased, the board shall elect such new directors to hold office until the term of the class of directors to which they shall be assigned by the board shall expire, and until the election of their successors. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, of as near an equal number as possible. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any vacancy in any class of directors through death,

resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor, or they may decrease the fixed number of the board as above provided.

The board of directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the "Act Concerning Corporations (Revision of 1896)," any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee of five, one of whom shall be the president, of which a majority shall constitute a quorum. The executive committee shall have and may exercise all or any of the powers of the board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The board of directors may appoint not only other officers of the company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary respectively.

The board of directors shall have power from time to time to fix and to determine, and to vary the amount of the working capital of the company; and to direct and determine the use and disposition

of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the company's capital stock as provided by law.*

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, and, from time to time, may alter, amend, or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF we have hereunto set our hands and seals the 29th day of April, 1901.

(Here follow the signatures of the incorporators and acknowledgments.)

Form 17.

[Section 200, *ante*.]

FORM OF CERTIFICATE OF INCORPORATION OF ASSOCIATION NOT FOR PECUNIARY PROFIT.

The undersigned persons desiring to associate themselves into a corporation pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate associations not for pecuniary profit," approved April 21, 1898, do hereby certify:

I. That the name by which such corporation is to be known in law is

II. That the purpose for which it is formed is

III. The corporation is to be located, and its principal business

* See section 38, *ante*.

resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor, or they may decrease the fixed number of the board as above provided.

The board of directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the "Act Concerning Corporations (Revision of 1896)," any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee of five, one of whom shall be the president, of which a majority shall constitute a quorum. The executive committee shall have and may exercise all or any of the powers of the board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The board of directors may appoint not only other officers of the company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary respectively.

The board of directors shall have power from time to time to fix and to determine, and to vary the amount of the working capital of the company; and to direct and determine the use and disposition

of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the company's capital stock as provided by law.*

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, and, from time to time, may alter, amend, or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF we have hereunto set our hands and seals the 29th day of April, 1901.

(Here follow the signatures of the incorporators and acknowledgments.)

Form 17.

[Section 200, *ante*.]

FORM OF CERTIFICATE OF INCORPORATION OF ASSOCIATION NOT FOR PECUNIARY PROFIT.

The undersigned persons desiring to associate themselves into a corporation pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate associations not for pecuniary profit," approved April 21, 1898, do hereby certify:

I. That the name by which such corporation is to be known in law is

II. That the purpose for which it is formed is

III. The corporation is to be located, and its principal business

* See section 38, *ante*.

is to be conducted in the _____ of _____, in the County of _____, State of New Jersey.

IV. The number of Trustees shall be _____, and the names of the Trustees selected for the first year are:

Name.

Residence.

V. The corporation may have an office outside of the State of New Jersey for the convenience of its officers and trustees and where meetings of the trustees may be held, at such places as may be determined by its trustees.

VI. The corporation shall maintain an office in the State of New Jersey, at _____ Street, _____, in the County of _____ and _____ shall be the registered agent in charge of such office, upon whom process against the corporation may be served.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the _____ day of _____, 19 _____.

[ADD ACKNOWLEDGMENT; SEE FORM 9, p. 350.]

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Form 18.

ACQUISITION OF EXISTING BUSINESS.

To acquire and take over as a going concern the business now carried on at No. Street, under the style or firm of A. B. & Co., and all or any of the assets and liabilities of the proprietors of that business in connection therewith.

Form 19.

ADVERTISING.

To carry on a general advertising business in all its branches, both as principals and agents; to carry on the business of printers, stationers, engravers, bookbinders, designers, dealers in paper and all fancy articles, booksellers, publishers, advertising agents, buyers and sellers of newspapers and publications of all kinds, and dealers in any other articles or things of a character similar or analogous to the foregoing, or any of them, or connected therewith; and, in general, to undertake and transact all kinds of agency business which an individual may legally undertake; to buy, sell and deal in tickets for theatres and all other places of amusement or entertainment.

Form 20.**AGENCY COMPANY.**

✓ To act as agent or representative of corporations, associations, firms and individuals, and as such to develop, improve and extend the trade and business interests of corporations, associations, firms and individuals.

Form 21.**AGRICULTURAL IMPLEMENTS.**

To manufacture, sell and deal in harvesting machines, tools and implements of all kinds, including harvesters, binders, reapers, mowers, rakes, headers and shredders; agricultural machinery, tools and implements of all kinds; binder twine, and all repair parts and other devices, materials and articles used, or intended for use, in connection with any kind of harvesting or agricultural machines, tools or implements.

To engage in the manufacture or production of, and to deal in, any materials or products which may be used in, or in connection with, the manufacture of harvesting or agricultural machines, tools and implements.

Form 22.**AIR POWER.**

To manufacture, buy, sell and deal in air compressors, electrical machines and apparatus, locomotives, engines, trucks and cars, and all machinery for the acquisition or use of power of any kind, and the erection of buildings for housing the same, and equipping and installing manufacturing plants generally, including the acquisition, by purchase, by manufacture or otherwise, of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

Form 23.**AMMONIA.**

To buy, sell, deal in and manufacture anhydrous ammonia, aqua ammonia, other ammoniacal and kindred products, and all materials, appliances and equipments used in or necessary in such business.

Form 24.**AMMUNITION.**

To manufacture, buy, sell, and deal in guns, revolvers and fire arms of every kind and description, gun powder, dynamite and other explosives, bullets, shot and generally projectiles of every kind and description.

To manufacture, sell and deal in chemicals and chemical preparations useful or necessary in connection with its business.

To apply for, buy, sell, deal in, lease or otherwise acquire, and to own, hold, use, lease to others, or otherwise dispose of trade marks, trade names, patents, formulae, and secret processes of all kinds.

Form 25.**AMUSEMENT PARKS.**

To purchase, lease or otherwise acquire and to hold, own, use, develop, mortgage, lease or sell or otherwise dispose of all real or personal property necessary or convenient for use as a public amusement park or resort. To purchase, lease or otherwise acquire and to manage, both as principals and agents, theatres, roof gardens, amusement parks, and any business connected therewith. To employ actors, singers, musicians, acrobats and public performers of all kinds and descriptions. To purchase, lease or otherwise acquire and to dispose of plays, copyrights and compositions both dramatic and musical. To purchase, lease, construct or otherwise acquire and dispose of ferris wheel, scenic railways and other amusement devices.

Form 26.**ANIMAL FANCIERS.**

To purchase, breed or otherwise acquire and to sell or otherwise dispose of domestic and wild animals, birds, fish and reptiles of all kinds and descriptions. To board, care for and otherwise keep for hire domestic and wild animals, birds, fish and reptiles. To employ veterinary surgeons and to contract for the treatment and treat sick animals, birds and reptiles and generally to engage in the business of breeders and animal fanciers.

Form 27.**ARCHITECTS.**

To carry on the business of architects and designers of buildings and structures of all kinds; the preparation and furnishing of plans, designs or other drawings and specifications, including estimates of cost, for the erection, alteration or repair of buildings and structures of any kind and description, and also the supervision and inspection of such work.

Form 28.**ARTIFICIAL STONE.**

(Concrete Granette Company.)

To manufacture, buy, sell, deal and trade in any and every kind of artificial stone, stone, brick, building materials and supplies, Portland cement, and all kinds of natural and other cement, lime, limestone, calcined and other plasters.

To make, enter into, perform and carry out contracts for constructing, altering, decorating, maintaining, furnishing, fitting up and improving buildings of every sort and kind. To advance money to and enter into contracts and arrangements of all kinds with builders, property owners and others.

To establish and maintain and operate manufactories, kilns, warehouses, agencies and depots for manufacturing its artificial stone, cement, brick and other products, and for their sale and distribution, and to transport or cause the same to be transported as articles of commerce.

Form 29.**AUTOMOBILE STORAGE AND SUPPLIES.**

The purposes for which said corporation is to be formed are as follows: To deal in, sell, operate and let for hire, automobiles, motorcycles and motor vehicles of every kind, nature and description.

To build, maintain and operate buildings, storage houses and garages for the storing, caring for and keeping for hire therein of automobiles, motorcycles and motor vehicles of every kind, nature and description.

And generally to buy, sell and deal in all goods, wares and merchandise necessary or incidental to the operation, repair or equipment of automobiles, motor cycles or motor vehicles of any and all kinds, manufactures and descriptions. And for the purpose

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of carrying on the businesses aforesaid to buy, sell and convey property, both real and personal, as the same shall be necessary, and generally to do all things that may be necessary to the conducting of said business.

Form 30.

AUTOMOBILE TIRES.

To manufacture, buy, sell, import, export and generally deal in tires for automobiles, bicycles, carriages and vehicles of all kinds and descriptions whether the said tires be made of rubber, metal, composition or other material or combination of materials.

Generally to buy, sell and deal in all goods, wares and merchandise necessary or incidental to the operation and repair or equipment of automobiles, motorcycles and other vehicles of all kinds and descriptions.

Form 31.

ASPHALT.

To carry on the trade or business of mining, manufacturing, producing, adapting and preparing, and buying and selling and otherwise dealing in asphalt and cement, and any articles or product in the manufacture or composition of which asphalt or cement is used, including the acquisition by purchase, mining, manufacturing or otherwise, of all material, supplies and other articles necessary or convenient for use in mining, manufacturing, producing, adapting and preparing asphalt and cement and such other articles or product, also to quarry, dig, mine, deal in and sell any and all kinds of minerals, stone and other products of the earth; also to pave, construct, repair, improve and maintain streets, highways, roads and any and all public and private works.

Form 32.

AUDITORS.

To open, take charge of, maintain, keep, institute, examine, audit, certify to and guarantee the correctness of the books and accounts of all persons, firms, partnerships, corporations, banks, trust estates, trust companies, building and loan associations, beneficial associations and all other natural or corporate beings whatsoever.

To furnish all persons, firms, partnerships and corporations with complete and modern system or systems of auditing and accounting and to act as controller or auditor thereof, and to issue certificates of efficiency to accountants.

To act as a collecting agency for its patrons, take assignments of claims against debtors of its patrons and others, and sue thereon in its own name, if not prohibited, to act as mercantile agency, to investigate and recommend persons desirous of doing business with its patrons and others, and to issue certificates as to the responsibility of persons, firms, partnerships and corporations.

Form 33.

AUTOMOBILES.

To build, construct, operate, to prepare for market and market motor vehicles, engines, machinery and equipments in connection with the manufacture or operation of vehicles, including all apparatus, machinery, tools or property useful in connection therewith.

Form 34.

AUTOMOBILES.

The manufacture and sale of various kinds of motors, engines, machines or other machinery or contrivances for the generation of steam, electric, gasoline or other forms of power now known or which may hereafter be discovered; the manufacture and sale of cars, carriages, wagons, boats and vehicles of every kind and description, for the transportation of passengers or goods, whether the same shall be propelled by motors, engines, machines or other contrivances operated by means of steam, electricity, gasoline or other forms of power; the manufacture and sale of machinery, machinery supplies, and engineering appliances, whether incidental to the construction of motor vehicles or not.

Form 35.

BAKERY.

To manufacture, buy, sell, import, export, trade and deal in bread, biscuits, crackers, pastries, cakes, pies, confectionery, ice cream and ices, sherbets, fruit juices, extracts and soda fountain beverages, and generally to do all things that may be necessary to the conducting of said business.

Form 36.**BAKING POWDER.**

Manufacturing, buying, selling, importing, exporting, refining and dealing in baking powders, argals, cream of tartar, tartaric acid, and all other chemicals which are or may be component parts of baking powder, or may be conveniently produced or dealt in in connection therewith, and generally to carry on any manufacturing or other business which can conveniently be carried on in conjunction with any of the matters aforesaid, or in or upon the premises of the company _____

Form 37.**BICYCLES.**

The manufacture and selling of bicycles and all parts and accessories thereof and the carrying on of any trade or business incident thereto or connected therewith; the manufacturing and selling of automobile vehicles and electric and other motors, and the carrying on of any trade or business incident thereto or connected therewith; the carrying on of any manufacturing or mercantile business lawful in the place where such business shall be carried on.

Form 38.**BICYCLE SADDLES AND SUNDRIES.**

To manufacture, buy, sell, deal in and deal with bicycle saddles, bicycle parts and bicycle appurtenances of all kinds, and to acquire by purchase, manufacture or otherwise all materials, supplies and other articles manufactured or unmanufactured, and all real and personal property necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof, and to sell and dispose of the same.

Form 39.**BISCUIT COMPANY.**

To manufacture, buy, sell and export biscuits, crackers, cakes, pastry, Italian paste, confectionery and other food products, and to acquire and dispose of shares of the capital stock of other corporations organized in this state, or elsewhere, for similar purpose or purposes incidental thereto, and to do and transact all lawful business incidental to all or any of the above-mentioned objects.

Form 40.**BOOT AND SHOE MANUFACTURERS.**

To carry on the business of boot and shoe makers and dealers, and to manufacture, buy, sell and deal in boots, shoes, leather, and leather goods of all kinds, blacking, varnish, and other preparations for boots or leather, lasts, boot stretchers, boot jacks, button hooks, laces, fastenings, buckles, and all other accessories.

Form 41.**BREWERY.**

To brew, manufacture, make, buy, sell and deal in porter, ale, lager beer and liquors of all sorts and kinds, and all other kinds of malt liquors; to manufacture and sell malt; to purchase, refine, sell, deal in and manufacture molasses and sugars of all kinds and all the products of the sugar cane; to manufacture, buy, sell and deal in ice; and in general to carry on the business of brewing, malting, distilling and ice making, in all its branches, and any business incidental thereto.

Form 42.**BOXES.**

To manufacture, buy, sell, import, export, trade and deal in boxes, chests, cartons and packing devices generally, whether composed of wood, metal, paper or other materials.

Form 43.**BRIDGE BUILDERS.**

To manufacture and sell bridges and bridge and structural work; to buy, sell, manufacture and trade in steel, iron and other metals, and their by-products, and to store and transport the same; also to construct, acquire, maintain, work or operate, lease, sell or otherwise dispose of any lands, appurtenances, plants, business, good will, mills, furnaces, factories, engines, boilers, machinery, apparatus, tools, appliances, and conveniences; also to buy, sell, manufacture and trade in structural iron and steel, plates, materials, supplies, or articles made partly or wholly from metals of any kind; also to buy, sell, manufacture and trade in such other raw materials, products or merchandise as may be conveniently

or advantageously used or sold in connection with said business in any of its branches or otherwise; also to apply for, purchase, acquire, hold, own, use, operate, sell, assign or dispose of any or all inventions, improvements and processes used in connection with or secured under letters-patent of the United States, or other countries, or otherwise, and to acquire or grant licenses and rights in respect thereof, or otherwise; and, with a view to the working or development of the same, to carry on any similar business, whether manufacturing or otherwise, calculated, directly or indirectly, to effectuate the objects of such corporation.

Form 44.

BROKERS.

The buying and selling of municipal bonds and other municipal securities, also stocks, bonds, mortgages and commercial paper.

Form 45.

BRONZE.

Manufacturing and dealing in silicon and aluminum and other bronzes, and all kinds of metals and metallic compounds, and articles composed wholly or in part of metal, and electrical supplies, and purchasing, holding, selling, exchanging, leasing, pledging and mortgaging, either directly or indirectly, through agents or trustees, real estate, personal assets, patents, patent rights and other rights, easements, interests, stocks and franchises, which and in such manner as may be advantageous or convenient in the prosecution of its business and authorized by the statute laws of the state.

Form 46.

BRUSHES.

To purchase, manufacture or dispose of, by sale or otherwise, all kinds of brushes, brooms and dusters; to purchase, manufacture and dispose of, by sale or otherwise, other articles incident to the making of said brushes, brooms and dusters; to acquire and hold, sell or otherwise dispose of, such real estate or other property as the business of the company may require, and in general to perform all the functions intended by law or usage to a manufacturing corporation.

Form 47.**BUILDING CONTRACTORS.**

To make, enter into, perform and carry out contracts for constructing, altering, decorating, maintaining, furnishing, fitting up and improving buildings of every sort and kind; to advance money to and enter into contracts and arrangements of all kinds with builders, property owners and others; to carry on in all their respective branches the businesses of builders, contractors, decorators, dealers in stone, brick, timber, hardware, and other building materials or requisites; to purchase for investment or resale, and to sell houses, lands, real property of all kinds and any interest therein, and generally to deal in, sell, lease, exchange or otherwise deal with lands, buildings and any other property, whether real or personal.

Form 48.**BUILDING MATERIALS.**

To manufacture, buy, sell, deal and trade in any and every kind of brick, stone, and building materials and supplies, to transport bricks, building materials, goods and merchandise by land or water, and for that purpose to purchase, own or charter, and operate, steam boats, steam tugs, barges and other boats.

Form 49.**BUTTONS.**

(Castle Button Company.)

To manufacture, buy, sell, deal in and deal with goods, wares and merchandise of every class and description, and in particular buttons composed partly of metal and partly of silk or wool or other fabrics or materials; and novelties of all kinds; and to manufacture, produce, buy, sell, deal in and deal with machines, articles, appliances and devices of all kinds useful or necessary in accomplishing the objects hereof, or any of them;

To purchase, take, acquire, lease, hold, own, maintain, work, develop, sell or otherwise dispose of, mortgage, exchange and improve or otherwise deal in and with real estate or any interest and rights therein and in all kinds of property without limit as to amount; and to erect, construct, alter, maintain and improve lands, buildings or works of other description on any lands of the cor-

poration, or upon any other lands, and to repair, alter and improve existing buildings or works thereon;

To purchase or otherwise acquire, sell, mortgage, lease, grant licenses in respect of and otherwise deal in and with trade-marks, trade names, inventions, processes and letters-patent of the United States or of any other government, and with a view to the working and development of the same, to carry on any business, manufacturing or otherwise, that the company may deem calculated either directly or indirectly to attain these objects or any of them.

Form 50.

CAR BUILDERS.

To manufacture, purchase, import or otherwise acquire and to sell, lease, exchange, export and generally deal in passenger, freight, sleeping, dining, mail and express cars and other cars of all kinds and descriptions for use either upon steam, electric, street or other railroads and generally to engage in the business of car builders.

To manufacture, buy, sell, lease, import, export and generally deal in railroad equipment of all kinds and descriptions either as principals, agents or factors and to engage in manufacturing generally.

Form 51.

CARPET CLEANERS.

To construct, purchase, lease or otherwise acquire and to hold, own, use and otherwise dispose of buildings and equip and use the same for the purpose of conducting the business of carpet cleaners, renovators, dyers and cleaners of materials and fabrics of all kinds and descriptions.

To manufacture or otherwise acquire and to use and dispose of pneumatic and other appliances for the cleaning and renovating of fabrics and materials of every kind and description.

To manufacture or otherwise acquire and to use and dispose of chemicals, dyes and other chemical and industrial products and to purchase, apply for or otherwise acquire and hold, own, use and dispose of patents, trade-marks, trade names, secret processes and formulae of all kinds and descriptions.

Form 52.

CARRIAGES AND WAGONS.

To manufacture, repair, buy, sell, exchange, import, export, trade and deal in carriages, buggies, coaches, coupes, carts, omnibuses, wagons, trucks, automobiles, motor cars and wheeled vehicles of all kinds, and bodies and parts for the same, cutters, sleighs and like vehicles for the conveyance of persons and property.

Form 53.

CASH REGISTERS.

To manufacture, buy, sell and deal in cash registers, check printing registers, slip printing registers, tape-printing registers, autographic registers, adding machines, calculating machines, registering machines, and any and all similar registers, machines, apparatus and devices and to do all acts and things and to transact all business necessary or proper in connection with the said objects, or incidental thereto, or in any wise connected therewith; and, in general, to carry on any other business, whether manufacturing or otherwise, for the furtherance of the said objects.

Form 54.

CATTLE.

To breed, raise, and deal in cattle and live stock of all kinds, and to carry on a general cattle and agricultural business.

Form 55.

CATTLE.

To buy and sell, at wholesale and retail, any and all kinds of cattle and live stock, and any and all kinds of meats, and such goods, wares and merchandise pertaining and belonging to the cattle, live stock, meat and butcher business; and to possess, lease, own, hold, erect, and maintain abattoirs for the slaughter and killing of all kinds of animals and cattle usually used for food; and to prepare in any and every manner the carcasses of such animals and cattle into merchandise for the butcher and meat business; and to manufacture such into merchantable and vendible articles; and to manufacture provisions, sausages and other articles

and merchandise made of meats and fat, and all kinds of goods kindred to the meat and butcher business; and to buy and sell, convey, hold, acquire, and mortgage all personal and real property necessary or pertaining or in any wise belonging to the meat, butcher, cattle and live stock business, or to carry on any part of said business.

Form 56.

CATTLE AND PACKING.

(Kankakee Packing Company.)

To buy and otherwise acquire, sell and otherwise dispose of, deal in and with and to slaughter hogs, cattle, sheep and other live stock;

To acquire by purchase or otherwise, preserve, pack, manufacture, cure, and deal in and with all kinds of ham, sausages, meats, beef, pork, bacon, lard, fat, tallow, fertilizers and provisions, and all or any products and by-products of live stock of every nature and kind;

To carry on the business of cold storage and warehousing and all or any business necessarily or impliedly incidental thereto;

To operate and maintain a packing-house for preserving and packing meats and provisions of all kinds, and to produce, buy or otherwise acquire, sell or otherwise dispose of, deal in and with, the product of the same;

To conduct a general trading, commission and storage business;

To construct, hire, purchase, operate and maintain any or all conveyances for the transportation in cold storage or otherwise by land or by water of live stock of any and all kinds and of any of the products or by-products thereof and of all or any kind of manufactured articles hereinbefore specified or referred to, and for such purpose to manufacture, prepare for market, market and transport, deal in and with ice and all cooling and refrigerating compounds and materials and all products and by-products thereof and to carry on all or any business conveniently, necessarily or impliedly incidental thereto;

To promote, construct, own, lease, hire, operate and control transportation undertakings, terminal facilities, transportation line or lines by land or water or operated by land or operated by water for the transportation of passengers and of freight, merchandise and articles of commerce and to develop any properties, undertakings, industries, enterprises of companies for transportation by land or water in any state or foreign country either directly or through ownership of stock in any corporation and to do all other

acts and things necessary to effectuate these objects or any of them, provided, however, that this company shall not engage in any business which shall require the exercising by it of the right of eminent domain within the State of New Jersey or which shall require the exercising of such right or be contrary to the local laws of any state or foreign country;

To purchase, take, acquire, lease, hold, own, maintain, work, develop, sell, convey, mortgage, exchange and improve or otherwise deal in and with real estate or any interest and rights therein and any water and water rights and in all kinds of property and chattels without limit as to amount, and to erect, construct, alter, maintain, and improve lands, buildings or works of any description on any lands so purchased or otherwise acquired or upon any other lands and to repair, alter and improve existing houses, warehouses, or works thereon;

To manufacture, produce, buy or otherwise acquire, sell or otherwise dispose of and generally deal in and with all kinds of goods, wares, merchandise and materials, raw as well as the finished product;

To acquire the good will, business, rights and property of any person, firm, association or corporation; to pay for the same in cash, the stock of the corporation, bonds or otherwise; to hold or in any manner dispose of the whole or any part of the good will, business, rights and property so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business;

To acquire, by purchase, subscription or otherwise, and to hold, own and dispose of, the stocks, bonds or other evidences of indebtedness of any corporation, and to issue in exchange therefor the stocks, bonds or other obligations of the corporation, and to exercise all the powers of a stockholder in any such other corporation, and the president, or any other officer of the corporation, shall be eligible to the office of director in any such corporation, the same as if he were an individual stockholder therein.

Form 57.

CEMENT.

To manufacture, sell and deal in Portland cement, and all kinds of natural and other cement, lime, limestone, calcined and other plasters and artificial stone, and to erect, or acquire by purchase, lease or otherwise, manufactories, kilns and buildings; to establish and maintain and operate manufactories, kilns, warehouses, agencies and depots for manufacturing and storing its cement

and other products, and for their sale and distribution, and to transport, or cause the same to be transported, as articles of commerce, and to do any and all things incidental thereto and necessary and proper to be done in connection with the business of trading and manufacturing as aforesaid.

Form 58.

CEREALS.

To buy, sell, store, warehouse, deal in and handle in every manner, oats, grains and cereals of every description, and to grind, mill and convert the same into the various products thereof. To own, lease or otherwise hold elevators, mills, granaries and structures of every nature and kind for the storing, handling, utilization and sale of oats, grains, cereals and agricultural products of every nature and kind. To carry on a milling and manufacturing business, and the business of transporting agricultural products of every nature and kind. To manufacture, buy, sell, and deal in, agricultural machinery, and milling machinery and machinery for handling oats, grains, cereals and all agricultural products, and machinery for converting agricultural products of all kinds into their various products and by-products.

Form 59.

CHEESE.

To manufacture, buy, sell, import, export, store, trade and deal in cheese and dairy products.

Form 60.

CHAINS AND CABLES.

(National Link Chain Belt Company.)

To do a general manufacturing, product-producing, transporting and marketing business, not limited to, but including, any article, product or by-product, manufactured or otherwise, of which iron, steel, lead, copper or other metals and substances are parts component, or otherwise, including chains, cables, belts, pulleys, rods, conveyors, links, wires and any articles of a similar nature or otherwise which it may, from time to time, seem to the company desirable to deal in and deal with.

To carry on the business of mechanical and electrical engineers, toolmakers, machinists, founders, metal workers, smiths,

builders, fitters, cutlers, carriers, and merchants, and any other business or businesses which may seem calculated, directly or indirectly, to enhance the value of or render profitable any of the company's property or rights, or conducive to any of the company's objects.

To buy, sell, make, repair, alter, let on hire and deal in apparatus, machinery, hardware and articles of all kinds capable of being used for the purpose of any business herein mentioned or likely to be required by customers of any such business.

To acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, real or personal, and in particular business concerns and undertakings.

Form 61.

CHEMICALS.

To manufacture, buy, sell, deal in and use alkalies and chemicals of all kinds and all articles and things used in the manufacture, maintenance and working thereof, and also all apparatus and implements and things for use either alone or in connection with products of which they are ingredients or in the manufacture of which they are a factor.

Form 62.

CHEMICALS AND SUPPLIES.

(St. Louis Chemical Company.)

To manufacture, buy, sell, deal in and deal with bleaching powder and caustic soda and kindred articles and the products and by-products thereof and all kindred preparations and products.

To carry on the business of chemists, druggists, and manufacturers, importers and dealers in pharmaceutical, medicinal and other preparations, and to manufacture, buy, sell, refine, manipulate, import, export, and deal in and with all substances, ingredients, materials, supplies, machinery, apparatus, appliances and things capable of being used in any such business as aforesaid, either by wholesale or retail.

To construct, lease, own, operate, or sell transportation line or lines by land or water in any state or country either directly or through the ownership of stock of any corporation, but always subject to the local laws of such state or country.

To promote, construct, provide, acquire, carry out, maintain, improve, manage, develop, control, take on lease or agreement, sell, lease, let, license to use, work, use and dispose of any docks, bridges, reservoirs, canals, watercourses, hydraulic works, gas works, works, mills, factories, warehouses, shops, buildings, dwellings for employees and others, and all other works and conveniences.

To apply for, obtain, register, purchase, or otherwise acquire, and hold, own, use, operate, introduce and sell, assign or otherwise dispose of any and all other works, formulæ, secret processes, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent or otherwise of the United States or of any other country, and any governmental grants or concessions, and to use, exercise, develop, grant licenses in respect of or otherwise to account for all such trade-marks, patents, licenses, concessions, processes and the like or any such property, rights or information so acquired.

To acquire by purchase or otherwise, hold, own, use, develop, improve, buy, sell, deal in and deal with real and personal property and all interests and rights therein, including water and mining rights, without limit as to amount in any of the states, territories, colonies or dependencies of the United States, and in any foreign country, and therein to mine, quarry, smelt, manufacture, deal in and deal with coal, iron, sulphur, phosphate and other minerals and the products thereof, but subject always to the local laws.

Form 63.

CHEMISTS AND DRUGGISTS.

To carry on the business of chemists, druggists, chemical manufacturers, importers, exporters, manufacturers and dealers in chemical, pharmaceutical, medicinal and other preparations and chemicals.

To buy, sell, manufacture, refine, manipulate, import, export and deal in all substances, apparatus, and things capable of being used in connection with any such business as aforesaid, either by wholesale or retail, to construct, maintain and alter any building, works or mines necessary or convenient for the purpose of the company.

Form 64.

CITY BUILDINGS.

To acquire by purchase, lease, exchange or otherwise, land situate in the City of _____ and its neighborhood, and any estate or interest therein, and any rights over or connected with

land so situate, and to turn the same to account, as may seem expedient, and in particular by preparing building sites, and by constructing, reconstructing, altering, improving, decorating, furnishing and maintaining offices, flats, houses, factories, warehouses, shops, wharves, buildings, works and conveniences of all kinds, and by consolidating or connecting, or subdividing properties, and by leasing and disposing of the same.

To manage land, buildings and other property situate as aforesaid, whether belonging to the company or not, and to collect rents and income, and to supply to tenants and others attendance, messengers, light, heat and power and all other conveniences, electric or otherwise, and other advantages.

To acquire and take over any business or undertaking carried on, upon or in connection with any land or building which the company may desire to acquire as aforesaid, or become interested in, and the whole or any of the assets and liabilities of such business or undertaking, and to carry on the same, or to dispose of, remove, or put an end thereto, or otherwise deal with the same as may seem expedient.

To establish and carry on, and to promote the establishment and carrying on, upon any property in which the company is interested, of any business which may be conveniently carried on upon or in connection with such property, and the establishment of which may seem calculated to enhance the value of the company's interest in such property, or to facilitate the disposal thereof.

To assist financially or otherwise builders, tenants and others who may be willing to build on or improve any land or buildings in which the company is interested.

Form 65.

CLOTHING MANUFACTURERS.

To carry on the business of manufacturing and dealing in clothing and wearing apparel of every description, and any other articles which may be conveniently or advantageously handled in conjunction with the business aforesaid. To engage in the manufacture of woolen and cotton fabrics of all kinds and any and all materials used in the manufacture of clothing and wearing apparel.

Form 66.

COAL.

To mine and sell coal and other minerals and manufacture and sell coke and its by-products.

Form 67.

COAL.

To buy and sell bituminous and semi-bituminous coal, and to act as the agent of coal companies in selling their coal, and to make contracts with coal companies in reference to handling and selling their coal on such terms as may be agreed upon, and for the purpose of handling coal, to own or rent storehouses, docks, piers and any real estate necessary to the carrying on of the said business.

Form 68.

COAL.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron or other ores or minerals, and any wood lands or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores or other minerals and timber from any lands owned, acquired, leased or occupied by the company.

To manufacture iron, steel, coke, gas, lumber and other materials, and all or any articles consisting or partly consisting of iron, steel, coal or other materials, and any and all products thereof.

To buy, sell, or otherwise to deal or traffic in coal, coke, ores, wood, lumber and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

Form 69.

COAL.

To acquire by purchase, lease or otherwise coal mines, coal lands, coal properties, mineral and mining rights, to develop, mine and operate such mines and property; to buy and sell coal, manufacture, purchase and sell coke and other by-products, to produce and deal in gas, oil and other mineral products, to purchase, build and lease houses, store buildings and other structures, and to construct, maintain and operate all necessary railways and tramroads; to buy and sell merchandise at wholesale and retail, and conduct a general mercantile business; to buy and sell real estate and lay out town sites and sell lots; to construct or otherwise acquire, and to maintain and conduct a hotel or hotels.

To engage in any business connected with the health, comfort

or welfare of its employees; to supply, by manufacturing or otherwise, materials for its or their use, and generally to carry on any other manufacturing or trading business, exporting or importing, which can conveniently be carried on in connection with any of the objects herein set forth.

To buy, sell and lease oil and gas properties, construct and maintain pipe lines, and to drill oil and gas wells and develop, operate, lease or sell the same; to furnish, sell and supply both natural and artificial gas; to sell oil, and engage in the business or refining the same, and generally to furnish, sell, supply and dispose of the product of said wells and properties; to acquire water rights and privileges, construct pipe lines and mains, and establish water-works with all necessary equipment, and to use, furnish, sell and supply water; to construct and establish a plant or plants with all necessary equipment, rights and privileges for the manufacture and production of electricity, and to use, furnish, sell and supply the same; to own, construct and operate street railways by electricity or other motive power, and to hold any and all rights, privileges and franchises incident or necessary thereto; except that the company shall not maintain or operate any railroad or engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

Form 70.

COLD STORAGE.

The carrying on and conducting the business of storage, cold storage, refrigeration, freezing and ice-making and dealing in plants for said purposes; the manufacturing, producing and supplying in any manner cold air, refrigeration, ice and freezing compounds in any form for use, distribution and application for any and all purposes; the constructing, purchasing, acquiring, equipping, owning, maintaining, operating, selling and leasing plants, machines, equipments, machinery, apparatus, general supplies, inventions, patents and processes, together with all other property, rights and privileges for any of said purposes, or a part thereof.

Form 71.

COLLECTION AND COMMERCIAL AGENCY.

To act as a collecting agency for its patrons, take assignments of claims against debtors of its patrons and others, and sue thereon

in its own name, if not prohibited; to act as mercantile agency, to investigate and recommend persons desirous of doing business with its patrons and others, and to issue certificates as to the responsibility of persons, firms, partnerships and corporations, associations and institutions.

Form 72.

COLLEGE DORMITORIES.

To purchase, take on lease, or otherwise acquire lands or buildings in the state of , and elsewhere in the United States of America, and the colonies, territories and dependencies thereof, or elsewhere; to erect on such lands as aforesaid, or any of them, houses, cottages, tenements, dormitories, lodgings, and any and all other necessary buildings suitable for the residence and other accommodation of students of College, and other similar institutions of learning, and for such agents and employees as may be required, and for all or any similar purpose or purposes.

To fit up and furnish, and lease or sublet the same, and to carry on the business of lodging house, boarding house and restaurant keepers.

To use, convert, adopt and maintain all or any such lands, buildings and premises to and for the purpose of dwelling houses, lodging houses, hotels and inns, with their usual and necessary adjuncts.

Form 73.

COLONIAL DEVELOPMENT.

IN THE ISLAND OF

To construct, acquire, own, maintain and operate railroads and tramways, to be worked by steam, electricity or any other motive power.

To own and operate sleeping cars, parlor cars and cars of any other description on any railroads and tramways.

To construct, acquire, own, maintain and operate telegraph lines and telephone lines, and other means of communication in connection with any railroads and tramways or otherwise.

To establish, acquire, own and operate stage lines and other lines for the transportation of passengers, goods and merchandise by vehicles upon land.

To establish, acquire, own and operate express lines for the special carrying of parcels, money and valuables upon any railroads, tramways, roads, rivers or otherwise.

or welfare of its employees; to supply, by manufacturing or otherwise, materials for its or their use, and generally to carry on any other manufacturing or trading business, exporting or importing, which can conveniently be carried on in connection with any of the objects herein set forth.

To buy, sell and lease oil and gas properties, construct and maintain pipe lines, and to drill oil and gas wells and develop, operate, lease or sell the same; to furnish, sell and supply both natural and artificial gas; to sell oil, and engage in the business or refining the same, and generally to furnish, sell, supply and dispose of the product of said wells and properties; to acquire water rights and privileges, construct pipe lines and mains, and establish water-works with all necessary equipment, and to use, furnish, sell and supply water; to construct and establish a plant or plants with all necessary equipment, rights and privileges for the manufacture and production of electricity, and to use, furnish, sell and supply the same; to own, construct and operate street railways by electricity or other motive power, and to hold any and all rights, privileges and franchises incident or necessary thereto; except that the company shall not maintain or operate any railroad or engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

Form 70.

COLD STORAGE.

The carrying on and conducting the business of storage, cold storage, refrigeration, freezing and ice-making and dealing in plants for said purposes; the manufacturing, producing and supplying in any manner cold air, refrigeration, ice and freezing compounds in any form for use, distribution and application for any and all purposes; the constructing, purchasing, acquiring, equipping, owning, maintaining, operating, selling and leasing plants, machines, equipments, machinery, apparatus, general supplies, inventions, patents and processes, together with all other property, rights and privileges for any of said purposes, or a part thereof.

Form 71.

COLLECTION AND COMMERCIAL AGENCY.

To act as a collecting agency for its patrons, take assignments of claims against debtors of its patrons and others, and sue thereon

in its own name, if not prohibited; to act as mercantile agency, to investigate and recommend persons desirous of doing business with its patrons and others, and to issue certificates as to the responsibility of persons, firms, partnerships and corporations, associations and institutions.

Form 72.

COLLEGE DORMITORIES.

To purchase, take on lease, or otherwise acquire lands or buildings in the state of _____, and elsewhere in the United States of America, and the colonies, territories and dependencies thereof, or elsewhere; to erect on such lands as aforesaid, or any of them, houses, cottages, tenements, dormitories, lodgings, and any and all other necessary buildings suitable for the residence and other accommodation of students of _____ College, and other similar institutions of learning, and for such agents and employees as may be required, and for all or any similar purpose or purposes.

To fit up and furnish, and lease or sublet the same, and to carry on the business of lodging house, boarding house and restaurant keepers.

To use, convert, adopt and maintain all or any such lands, buildings and premises to and for the purpose of dwelling houses, lodging houses, hotels and inns, with their usual and necessary adjuncts.

Form 73.

COLONIAL DEVELOPMENT.

IN THE ISLAND OF _____

To construct, acquire, own, maintain and operate railroads and tramways, to be worked by steam, electricity or any other motive power.

To own and operate sleeping cars, parlor cars and cars of any other description on any railroads and tramways.

To construct, acquire, own, maintain and operate telegraph lines and telephone lines, and other means of communication in connection with any railroads and tramways or otherwise.

To establish, acquire, own and operate stage lines and other lines for the transportation of passengers, goods and merchandise by vehicles upon land.

To establish, acquire, own and operate express lines for the special carrying of parcels, money and valuables upon any railroads, tramways, roads, rivers or otherwise.

To construct, acquire, own, maintain and operate pneumatic tubes and other devices for the transmission and delivery of mails and parcels and other articles.

To construct, acquire, own, operate and manage pipe lines and other structures necessary or useful in the transportation of mails, freight or passengers.

To construct, acquire, own, operate and manage ferries, wharves, piers, docks, harbors, canals, locks, dams and other structures, necessary or useful in connection with any transportation business, or other business.

To construct, acquire, own, operate and manage hotels, depots, warehouses and other houses of any description.

To carry on the business of contractors for the construction of railroads and other works of public and private utility.

To manufacture, acquire, and use, sell, lease or otherwise dispose of rolling stock and other railway or tramway equipment and appliances, and land vehicles of any description, steamboats, sailing boats and other vessels.

To manufacture, acquire, and use, sell, lease, or otherwise dispose of engines, machinery, tools, implements and appliances necessary or useful for any business.

To construct, acquire, own, operate, sell or lease plants and machinery, apparatus and appliances for the production, distribution and supply of electricity, steam and gas for lighting, heating, power or other purposes, and for the supply of water and air for power or other purposes, and for the supply of refrigeration.

To construct, acquire, own and operate works for the manufacture and sale of coke and its by-products.

To acquire, own, operate, sell or lease smelting works, refineries, mills and manufactories.

To acquire, own, develop, improve, operate, manage, sell, exchange, lease or otherwise deal in mining properties, asphalt properties, oil properties, timber properties, plantations, and other agricultural properties, real estate in cities, towns and villages, and real and personal estate of any description.

To carry on any kind of manufacturing, mining, chemical, trading and agricultural business.

IN THE ISLAND OF

AND ELSEWHERE:

To establish and maintain and operate lines and steamships or other vessels and to enter into contracts for the carriage of passengers, mails and goods to and from and in the Island of , either by the company's own vessels, railroads and conveyances, or on the vessels, railroads or conveyances of others.

To acquire, hold, use, sell, assign, lease, mortgage or otherwise dispose of letters patent of the United States, or any foreign

country, patents, patent-rights, licenses and privileges, inventions, improvements and processes relating to or useful in connection with any branch of business hereinbefore described.

To promote the organization of corporations and other business enterprises for any of the foregoing purposes, or for any other lawful purposes.

To carry on any business operations deemed by the corporation necessary or advisable in connection with any of the objects of its incorporation or in furtherance of any thereof, or tending to increase the value of the property at any time held by the corporation.

To do any or all things which may be lawful and be deemed by the corporation useful to promote the general development of the Island of

Form 74.

COLONIZATION.

The planting, growing and cultivation of tobacco, oranges, sugarcane, coffee and all kinds of fruits and vegetables; the mining and quarrying of marble, stone, minerals and metals; to cut timber and deal in lumber, and to buy, sell, import, export or generally deal in all of the above fruits, vegetables, marble, stone, minerals, metals, timber or lumber; to build, establish or maintain a canning factory and to buy and sell canned goods; to establish, operate and conduct a hotel, store, packing-house, warehouse or sawmill; to raise, buy, sell and deal in cattle and generally to engage in the business of a planter; to deal in, buy, sell, acquire, lease, sublet or farm-let real estate and to plant, improve and develop the same by the erection of houses or buildings thereon and do such other lawful acts therein as may be needful or desirable in and about the said improvement or development thereof and generally to conduct the business of a real estate agent and to hold said real estate and own the same by purchase or otherwise; to build, maintain or acquire boats or vessels for the despatch and convenience of any of the business aforesaid.

Form 75.

COMMISSION MERCHANTS.

To do a general commission merchants and selling agents business, to buy, hold, own, manufacture, produce, sell and otherwise dispose of, either as principal or agent, and upon commission

or otherwise, all kinds of personal property whatsoever, without limit as to amount; to buy, sell, hold, own, manufacture, produce, sell and otherwise dispose of, either as principal or agent, all articles of furniture, household or otherwise, without limit as to amount; to make and enter into all manner and kinds of contracts, agreements and obligations by or with any person or persons, corporation or corporations, for the purchasing, acquiring, manufacturing, repairing and selling of any articles of personal property of any kind or nature whatsoever, and generally with full power to perform any and all acts connected herewith or arising therefrom or incidental thereto, and all acts proper or necessary for the purposes of the business.

Form 76.

CONFECTIONERY.

To purchase, manufacture, sell and deal in sugar, glucose, candy, confectionery, ice, ice cream, water ices, fruit syrups, chocolate, licorice, chewing gum, pop corn, and any and all articles consisting in whole or in part of sugar, glucose, candy or confectionery, chocolate, licorice, chewing gum and pop corn; to manufacture, purchase or otherwise acquire, hold, own, sell, assign and transfer, invest, trade and deal in goods, wares, merchandise, machinery, appliances and property of every class and description necessary or incident to the business of manufacturing, selling and dealing in sugar, glucose, candy, confectionery, ice, ice cream, water ices, fruit syrups, chocolate, licorice, chewing gum and pop corn and articles made from or containing the same.

Form 77.

CONSTRUCTION.

To carry on the business of contracting and construction in all its branches.

To build, erect, promote, construct, provide, acquire, repair, equip, carry out, maintain, develop, improve, operate, manage, control, take on lease or agreement, sell, lease, let, license to use, use, work and dispose of water, gas and electrical works, tunnels, bridges, viaducts, docks, wharves, piers, roads, ways, reservoirs, aqueducts, water courses, canals, hydraulic works, factories, warehouses, mills and all other works and conveniences.

Form 78.**CONTRACTORS AND BUILDERS.**

To carry on the business of building railways, houses, turn-pikes, public and private highways and roads, draining, reclaiming and improving submerged, swampy or other lands; buying, selling and improving all kinds of farming and timber lands; locating, purchasing and selling town sites; cultivating any and all kinds of crops, selling and utilizing the same for manufacturing products therefrom; buying, selling and dealing in merchandise.

Form 79.**CORDAGE.**

The manufacture and sale of cordage and binder twine, and any and all similar commodities, including the acquisition by purchase, manufacture or cultivation of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business of manufacture and sales as aforesaid; the taking, acquisition, buying, holding, owning, selling, leasing, mortgaging, improving, cultivating and otherwise dealing in and disposing of real estate, manufactories, buildings and improvements necessary or convenient in carrying on said business.

Form 80.**CORRESPONDENCE SCHOOL.**

To establish an educational institution in which persons of both sexes may be taught by correspondence or otherwise, such branches of useful and practical knowledge as shall fit them for occupations requiring applied knowledge in the arts and sciences.

To impart instruction and conduct examinations in all branches of architecture, building, chemistry, civil, mechanical electrical, mining and sanitary engineering; mechanical and free hand drawing and designing; painting, music, languages and literature, book-keeping, stenography, and all other branches and departments of human knowledge. To prepare, manufacture, sell, and generally deal in books, maps, charts, lesson and examination papers, stationery, models, casts, drawings, engravings, instruments, and school supplies of every class and description.

To prepare for publication, print, electrotpe, bind, sell and distribute magazines, newspapers, pamphlets and publications of all kinds and to engage generally in the business of job and book printers, bookbinders, stationers, engravers and electrotypers.

Form 81.**CORSETS.**

(R. & G. Corset Company of New York.)

To manufacture, purchase, sell and deal in and deal with corsets.

To manufacture, purchase, sell and deal in and deal with any and all articles of wearing apparel.

To construct, purchase, lease or otherwise acquire, to hold, use, improve, maintain and operate, and to let, sell, and otherwise dispose of factories, mills, works and other structures and improvements.

Form 82.**COTTON.**

The buying of seed cotton, the ginning and cleaning of same, both cotton and seed, the baling of cotton by mechanical process, the manufacture of machinery for the purposes named, and all business connected with and collateral thereto, including the selling, shipping and warehousing of the products.

Form 83.**COTTON COMPRESS.**

To manufacture, to operate and to sell machinery for compressing cotton or other fibrous materials; to manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, to invest, trade, deal in and with goods, wares and merchandise and property of every class and description.

Form 84.**COTTON OIL.**

To carry on the trade or business of buying, selling, ginning, baling, adapting, preparing and otherwise dealing in seed cotton and any and all other kinds of cotton, and manufacturing, refining, producing, adapting, preparing, buying and selling, and otherwise dealing in cotton oil and other oils, and buying, selling and otherwise dealing in cotton seed, and manufacturing, producing, adapting, preparing, buying and selling, and otherwise dealing in any and

all the products derived from cotton seed, and utilizing any and all products and by-products derived from the operations of the plants of said corporation in such manner as may be advantageous or profitable, including the buying, selling, fattening and dealing in cattle; and also to manufacture, produce, purchase, adapt, prepare, use, sell and otherwise deal in any materials, articles or things required for, in connection with or incidental to any of the purposes above mentioned.

Form 85.

CROCKERY, GLASSWARE, ETC.

To carry on the business of manufacturers, exporters, importers and wholesale and retail dealers in crockery, glassware, china and all similar articles; lamps and all similar articles; clocks of all kinds, bric-a-brac and articles of virtu of all kinds, antiques of all kinds, bronzes of all kinds, brasses of all kinds and similar or like articles or things, household novelties and fancy goods and all other articles or things necessary, convenient or suitable for household use and utility.

To carry on the business of general manufacturers of and dealers in merchandise in all its branches and to import, export, buy, sell, deal in and deal with goods, wares and merchandise, chattels and effects of all kinds, both at wholesale and retail.

To purchase, take, acquire, lease, hold, own, maintain, develop, sell, convey, mortgage, exchange and improve or otherwise deal in and with real estate or any interest and rights therein, and to erect, construct, alter, maintain and improve buildings or works of any description on any lands so purchased or otherwise acquired, or upon any other lands and to repair, alter, and improve existing buildings, houses, warehouses, structures or works thereon.

To acquire the property and assets of all kinds and to undertake the liabilities of any person, firm, association or corporation, of the same general character as that for which this corporation is formed, either wholly or in part, and to pay for the same in the stock or bonds of this corporation or otherwise.

Form 86.

DAIRY PRODUCTS.

To manufacture, buy, sell, and otherwise deal in, and to export and import butter of all kinds, all kinds of dairy products, oleomargarine and butterine; to establish, construct, maintain and operate

refrigerating plants, and plants for the manufacture of ice; to acquire, maintain and operate refrigerating cars and to do any and all things necessary or incident to the operations of the company in the premises.

Form 87.

DECORATORS.

The carrying on of business in artistic decorative work, consisting of taking orders for completely or partially constructing, decorating and furnishing houses, halls or rooms; the making, using and selling in the said business stained and enameled glass, and the buying and selling, on commission or otherwise, all manner and kinds of artistic objects for use or ornamentation.

Form 88.

DEPARTMENT STORE.

(1) To establish and conduct a general department store.

(2) To carry on all or any of the businesses of dry goods merchants, cloth manufacturers, furriers, haberdashers, hosiers, manufacturers, importers, wholesale and retail dealers of and in textile fabrics of all kinds; milliners, dressmakers, mantua-makers, tailors, hatters, clothiers, furnishers, outfitters, glovers, lace manufacturers, feather dressers, boot and shoe makers; manufacturers and importers and wholesale and retail dealers of and in leather goods, household furniture, ironmongery, china and glassware, crockery and other household fittings and utensils, ornaments, bric-a-brac, stationery, notions and fancy goods, dealers in meats and provisions, drugs, chemicals and other articles and commodities of personal and household use and consumption; and generally of and in all manufactured goods, materials, provisions and produce.

(3) To carry on any of the businesses of coach and carriage builders, saddlers, harness-makers, house decorators, sanitary engineers, electrical engineers, and contractors in all the branches thereof; gasfitters, coal and wood dealers, land, estate, and house agents, builders, contractors, auctioneers, cabinet-makers, upholsterers, furniture removers, owners of depositories, warehousemen, carriers, storekeepers; manufacturers of and dealers in hardware, jewelry, plated goods, perfumery, soap, toilet articles of all kinds, and articles required for ornament, recreation or amusement; gold and silver-smiths, dealers in precious stones, watchmakers, newspaper proprietors, booksellers, dealers in musical instruments, manufacturers

of and dealers in bicycles, tricycles and motor carriages, and sporting goods of all kinds; and also refreshment¹ contractors, restaurant keepers, wine and liquor dealers, tobacconists, and dealers in mineral, aerated and other liquors; barbers and hairdressers, farmers, dairymen, market gardeners, nurserymen and florists, photographers and dealers in photographic supplies, printers, lithographers and engravers, dealers in domestic, trained and fancy animals.

(4) To buy, sell, manufacture, repair, alter and exchange, let on hire, export and deal in all kinds of articles and things which may be required for the purposes of any of the aforementioned businesses, or commonly supplied or dealt in by persons engaged in any such businesses, or which may seem capable of being profitably dealt with in connection with any of the said businesses.

(5) To provide and conduct refreshment-rooms, newspaper-rooms, reading and writing-rooms, dressing-rooms, telephones and other conveniences for the use of customers and others.

(6) To grant to other persons or corporations the right or privilege to carry on any kind of business on the premises of the company on such terms as the company shall deem expedient or proper.

Form 89.

DEPARTMENT STORE.

(John Wanamaker, New York.)

To establish and conduct a general department store in all its branches.

To carry on all or any of the businesses of dry goods merchants, cloth manufacturers, furriers, haberdashers, hosiers, manufacturers, importers, wholesale and retail dealers of and in textile fabrics of all kinds; milliners, dressmakers, mantua-makers, tailors, hatters, clothiers, furnishers, outfitters, glovers, lace manufacturers, feather dressers, boot and shoe makers and dealers, manufacturers and importers of gold and silver ware, and all articles produced therefrom, importers and dealers in paintings, engravings, statuary and works of art, manufacturers, importers and wholesale and retail dealers of and in leather goods, household furniture, carpets, rugs, china and glass ware, crockery, and other household fittings and utensils, ornaments, bric-a-brac, stationery, toys, sporting goods, notions and fancy goods, and dealers, purchasers and sellers of merchandise for personal, household and general use and ornament, and such other general merchandise, manufactured goods, materials, provisions, produce and such other general merchandise as is ordinarily dealt in by a store selling everything pertaining to goods,

wares and merchandise for personal, domestic, household or general use.

To carry on the trade or business of coach, carriage, automobile, bicycle, boat, launch, yacht, motor-boat builders in all or any of its branches and to buy, sell, import, export, manufacture, repair, let on hire and otherwise deal in and with carriages and vehicles of every class and description, however propelled, and in each and all of the respective classes of goods, wares, merchandise and articles for transportation last above specified.

To carry on the business of saddlers and harness makers, manufacturers and dealers in all kinds of leather and in all classes and kinds of saddlery, harness and horse equipment and leather goods, and clothing for horses, and other draught animals, and in all articles and things used in connection with horses and other draught animals.

To buy, sell, manufacture, repair, alter and exchange, let on hire, export and deal in all kinds of articles and things which may be required for the purposes of any of the said businesses, or commonly supplied or dealt in by persons engaged in any such businesses, or which may seem capable of being profitably dealt with in connection with any of the said businesses.

To provide and conduct refreshment rooms, reading and writing rooms, resting rooms, dressing rooms, and recreation and amusement facilities.

To provide accommodations by way of telephone, telegraph and mailing facilities and any other offices, conveniences or facilities for the general use and benefit of customers and others.

To import, export, buy, sell, assign, consign, take on consignment, lease, manufacture, deal in and deal with goods, wares and merchandise, chattels and effects of all kinds, both at wholesale and retail.

To the extent permitted by the Business Corporations Law of the State of New York, to purchase or otherwise acquire, sell, dispose of, lease and deal in real property of all kinds.

To enter into, make, perform and carry out contracts of every kind which a corporation organized under the Business Corporations Law may lawfully enter into, and for any lawful purpose with any person, firm, association or corporation.

To issue bonds, debentures or obligations of the company from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters-patent of the United States, or any foreign country, patents, patent-rights, licenses and privileges, inventions, improvements and processes, trade-marks

and trade names, relating to or useful in connection with any business of the corporation.

To conduct any or all of its business and to do any one or more of the acts and things herein set forth as its purposes outside of the State of New York and in other states, territories and dependencies of the United States and in foreign countries; and the corporation may conduct its said business and do the said acts and things or any of them in any of said states, territories, dependencies or foreign countries, and may have one or more offices out of the State of New York, and may hold, purchase, mortgage or convey real or personal property of every kind within, and, to the extent permitted by local laws, without the State of New York.

Form 90.

DISTILLERS.

To manufacture, buy, sell, deal in, distribute, store, warehouse and export whiskey of all kinds, high wines, alcohol, spirits and gins of all kinds, and all kinds of distillery products and by-products thereof; to carry on the general business of distilling, re-distilling and rectifying high wines, spirits and alcohol, and of compounding and blending of gins and whiskies of all kinds; to manufacture, buy, sell, deal in, store, warehouse, distribute and export grain, molasses and all articles used in connection with the operation of a distillery, and to manufacture, buy, sell, deal in, distribute, store, warehouse and export all products or by-products of such articles; to do a general warehouse and storage business; to do a general cooperage business; to issue, register, certify and guarantee warehouse receipts; to feed cattle; to carry or transport or cause to be carried or transported any of the property above referred to.

Form 91.

DOCK AND TERMINAL COMPANY.

To carry on the business of freighting, elevating, lighterage, storage, wharfage, warehousing, forwarding, docking, storing and berthing of ships, steam vessels, boats and every other kind of water craft; receiving, unloading, loading, transferring, storing, warehousing, elevating and forwarding by car, float, boat, and in any other way, all kinds of goods, wares, merchandise and any other commercial commodity or thing of value, and the doing of any act or, thing connected therewith or incidental to such business, act

or thing; erecting, constructing and maintaining elevators, coal bins, pockets and chutes, bulkheads, piers, basins, floating and other docks, warehouses, terminal, transfer and other facilities, buildings for manufacturing and trafficking, the purchasing, acquiring and holding property, rights, privileges and franchises necessary or incidental to the convenient transacting and conducting of the aforesaid business, and of selling, leasing, mortgaging, and conveying the same or any part thereof; the issuing of storage, dock and warehouse receipts negotiable and non-negotiable, covering all kinds of goods, wares, merchandise and any other commercial commodity or thing of value; the purchase and sale of ships, steamers, vessels and every other kind of water craft, and all goods, wares, merchandise, or any other commodity or thing of value; the making and manufacturing of engines, boilers, launches, boats, water crafts of all kinds, or any other article or thing of value; the collection and receipt of dockage, wharfage and storage dues and other compensation; the loaning of money on the pledge of goods, wares, merchandise and other property, or on the pledge of storage, dock or warehouse receipts therefor; and the advancing of freights, duties, fire and marine insurance and liens of every kind and nature upon goods, wares and merchandise or other property received on storage, or for the purpose of being warehoused or forwarded upon the pledge of said goods, wares, and merchandise or other property, or upon the pledge of storage, dock or warehouse receipts therefor.

Form 92.**DREDGING.**

Dredging, filling and reclaiming lands; general dredging work on any of the navigable rivers, lakes and harbors, in the various arms of the sea and rivers running into the same; dock building; river and harbor improvements.

Form 93.**DRUGS.**

To manufacture, buy, sell, import, export, trade and deal in drugs, medicines, proprietary articles, druggists' sundries, chemicals, extracts, tinctures, pomades, ointments, liniments, toilet articles, perfumeries, surgical apparatus, physicians' and hospital supplies, paints, oils, dye-stuffs, glass ware, fancy goods and general merchandise.

Form 94.**DRY GOODS (JOBGING).**

Buying, selling, importing, exporting and manufacturing goods, wares and merchandise, and other property, and carrying on and conducting a general wholesale importing and jobbing dry goods business.

Form 95.**DRY GOODS (WHOLESALE).**

To buy, sell, import and export goods, wares and merchandise of every name and nature; to manufacture goods, wares and merchandise and sell the manufactured products; to carry on and conduct a general wholesale domestic and foreign drygoods business on commission or otherwise.

Form 96.**DRY GOODS.**

To carry on all or any of the businesses of manufacturers, merchants, wholesale and retail, importers, exporters, generally without limitation as to class of products and merchandise, but especially of dry goods of every class and description, including laces, embroideries and white goods, linens, silks, notions, ribbons, handkerchiefs, gloves, curtains, textile fabrics of all kinds, household fittings and all articles and commodities of personal and household use and consumption.

Form 97.**ELECTRIC.**

To carry on the business of electricians, mechanical engineers and manufacturers, and workers and dealers in electricity, motive power, heat and light, and any business in which the application of electricity or any power, like or otherwise, is or may be useful, convenient or ornamental, or any other business of a like nature, and to manufacture and produce, and, either as principals or agents, trade and deal in and deal with any article belonging to any such business, and all apparatus, appliances and things used in connection therewith, or with any inventions or patents; to produce and accumulate electricity and electro-motive force, or other agency, sim-

ilar or otherwise, and to supply the same for the production, transmission or use of power for lighting, heating and motive purposes or otherwise, as may be thought advisable, and to light streets, places and buildings, public or private, by means of electricity, or otherwise, or to enable the same so to be lighted; to construct, maintain and operate works for the supply and distribution of electricity, for light, heat and power; to carry on the business of suppliers of light, heat and power and carriers of passengers and goods by land and by water in all its branches; to acquire by purchase or otherwise, maintain, equip, operate and build street and other railways operated by electricity or otherwise; to use or manufacture, operate and equip telephones, telegraphs, phonographs and all electrical apparatus now known, or that may hereafter be invented, including all wires or appliances for connecting electric apparatus at a distance with other electric apparatus, and including the formation of electric exchanges or centres; to acquire, by purchase or otherwise, and to use, operate and equip subways, conduits and ducts, and to obtain, accept and use all permits and also franchises, municipal or otherwise; to purchase or otherwise acquire and sell, work or otherwise deal with land, water, water-power, water-power supplies and water-power work and equipment, or works; to undertake, construct, acquire and carry on works of all kinds relating to any business of the company, and to enter into such contracts and make such arrangements as may be necessary to carry out the same.

To carry on the business of an electric light company in all its branches, and to construct, lay down, establish, fix and carry out all necessary cables, wires, lines, accumulators, lamps and works, appurtenances and appliances.

Form 98.

ELECTRICAL MACHINERY.

To carry on the business of manufacturers and dealers in electric motors, dynamos and other electrical machinery, appliances and plants, and to buy, sell, manufacture, repair, convert, alter, let or hire, and deal in electrical appliances and goods of every kind and character, and machinery of all manner or kind.

To produce and accumulate electricity and electro-motive force, and to supply the same for the production, transmission or use of power for lighting, heating and motive purposes or otherwise, as may be thought advisable, and to light streets, places and buildings, public or private, by means of electricity or otherwise, or to enable the same to be so lighted.

Form 99.**ELECTRIC LIGHTING.**

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish and distribute electric current for light, heat and power.

To manufacture, buy, sell, lease, let or operate any or all machinery or appliances for the manufacture, generation, storage, accumulation, transmission or distribution of any or all types of electric current, and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever.

To erect, buy, sell, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission and distribution of electric current and any or all machinery used therein or in connection therewith.

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes and other supplies and appurtenances used for or in connection with the manufacture, generation, accumulation, storage, transmission, distribution or use of gas and electric current for light, heat or power, or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat or power and otherwise, and install, erect and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electric current; and to manufacture and deal in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of gas and electricity.

To buy, sell, operate or lease pole lines, erect poles, string wires thereon, or on poles of other individuals or corporations, on any and all streets, avenues, highways and roads of counties, townships, towns, villages and cities, and over and under all canals and other waterways, and across any and all bridges, and to use the same either for the transmission of electric current for delivery to consumers on such lines or for transmission of current to independent vendors thereof, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such lines, both as through lines and for local delivery.

To build and construct and use, for any of the purposes stated above, underground subways or conduits in such streets, avenues, highways and roads, and under such canals and other waterways and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways.

Form 100.

ELECTRIC LIGHT, HEAT, POWER AND ICE.

(East Coast Light, Power & Ice Company.)

To carry on the business of manufacturing, distributing and selling light, heat or power, and for that purpose to build, own, and operate plants for the manufacture, acquiring, generating, accumulation and distribution of electricity, gas and steam, and plants of any other character adapted to produce light, heat, or power in any form.

To manufacture, buy, sell, deal in and deal with electrical machinery, apparatus or devices of any and all description, and to build, own, and operate lines, electrical subways, conduits or ducts or pipe lines for the conveyance of electrical current for telegraph, telephone, cable and for any other purpose or purposes necessary for any operations carried on by the company or incidental thereto.

To acquire, hold and assign municipal and other franchises and privileges necessary or convenient for such lighting, heating, power or other business.

To construct or otherwise acquire, own, maintain and operate, sell or otherwise dispose of street or suburban railroads, cars, and other fixtures and appurtenances necessary or convenient for the operation of such railways or incidental thereto.

To construct or otherwise acquire, maintain and operate, sell or otherwise dispose of all property and plants for the manufacture or generation of electricity or other agency necessary or convenient for such lighting, heating, power or other business.

To get, manufacture, prepare for market, market and transport ice, and all cooling and refrigerating compounds and materials, and all products and by-products thereof.

To carry on the business of refrigerating, cold storage and warehousing and all the business conveniently, necessarily or impliedly incidental thereto.

To construct, hire, purchase, operate and maintain any or all conveyances for the transportation in cold storage or otherwise by land or by water of any and all products, goods or manufactured articles.

To manufacture, buy, sell, deal in and deal with all machines, machinery, articles, devices and products whether manufactured or otherwise, now or hereafter useful, convenient, or which may be utilized for, or in connection with cooling, refrigerating, cold storage, warehousing or otherwise.

To construct, provide, acquire, maintain, improve, develop, sell, lease, license to use, work, use and dispose of any docks, bridges,

reservoirs, canals, water supplies, systems and courses, works—hydraulic, gas, electrical or otherwise—mills, factories, warehouses, shops, buildings, and any and all other works of private use, public utility or otherwise.

To equip, maintain, improve by purification or otherwise water works and water systems, supply and deliver water for power or any other purpose.

[As to the advisability of using this form for corporations operating in New Jersey, see *Richards v. Dover*, 61 N. J. Law, 400, 402 and cases in note to Section 6, p. 30. See also Public Service Corporation Law, p. 301.]

Form 101.

ELECTRIC RAILWAY, LIGHTING, &c.

In the West Indian Islands to generate, accumulate, distribute and supply electricity for light, heat, power and signaling and other purposes; to construct, own and operate lines for the conveyance of electric current for telegraph, telephone, cable and other purposes; to construct, own and operate electric telephone exchanges; to manufacture and supply gas for fuel and illuminating purposes; to light cities, towns, villages, buildings and places, both public and private, by gas or electricity; to make, own, sell or lease all machines, instruments, apparatus and other equipments necessary for the generation, distribution, accumulation and employment of gas and electricity or either of them for any purposes; and generally to manufacture, use and sell gas and electricity, or either of them, for any and all lawful purposes; to construct whatever works and do whatever may be necessary for the utilization and disposition of the by-products resulting from the operation of such works; to acquire, own, manage and convey real estate, mineral water, timber and oil properties and rights therein, and dealing in same, manufactured or unmanufactured, and to carry on the business of mining, smelting and refining and coke manufacturing; to build, own and operate and convey reservoirs and sewage, drainage, sanitary, water and all other public or private works; to acquire lands and to erect buildings and machinery necessary for the creation, transmission and utilization of power of any kind; in the West Indian Islands or elsewhere, to build, purchase or otherwise acquire steamship or other vessels of any class and to enter into contracts for the carriage of passengers, mail and goods, to and from and in the West Indian Islands, either by its own vessels, railways and conveyances or on the vessels, railways and conveyances of others; to construct, acquire, improve, develop, operate and manage steam, electric or other kinds of railways in said Islands, wharves, piers,

docks, warehouses, harbors, canals, dams, tunnels, bridges, viaducts, subways and conduits, pipe-lines and other buildings or works capable of being advantageously used in the transportation or care of freight or passengers, or the laying of cables, wires, pipes, etc., to construct, maintain and operate pneumatic tubes and other devices for the transmission and delivery of mails and parcels, to carry on the business of railway contractors, ship owners, engineers, manufacturers of locomotives, cars and machinery; to construct, own and operate steam plants for heating, furnishing power and other purposes; to manufacture, sell and distribute ice or refrigeration.

Form 102.

ELECTRIC VEHICLES.

To acquire by purchase, lease or otherwise, and to manufacture and construct vehicles of every and any kind or character used or useful as a means of conveying, delivering, moving, carrying and transporting persons, goods, chattels, products, substances and property of any and every kind and character and equip and install the same for use and operation by electricity, compressed air, oil, gas or any other means of motive power, either singly or in combination thereof, and to operate, use, sell, lease and hire the same, and to contract with corporations, firms, associations or individuals for operating, using, selling, leasing and hiring the same; to manufacture, purchase, own, lease, hire, erect, construct, equip, install, use, sell and dispose of all machines, compressors, generators, storage batteries, pumps, motors, structures, primary and secondary batteries, apparatus, instruments, fixtures and appliances for the manufacture, production, generation, distribution, use, supply and application of electricity, compressed air, oil, gas or other motive power, either singly or in combination thereof, or any or either of them, or any part or parts thereof.

Form 103.

ELEVATORS.

To manufacture, erect, build, furnish, equip, construct, repair, maintain, operate, buy, sell, and in general to utilize and deal in and deal with elevators and all kinds of hoisting machinery, including the acquisition by purchase, manufacture or otherwise of all materials, supplies, machinery and other articles necessary or

convenient for use in connection with and in carrying on the business herein mentioned or any part thereof.

To manufacture, purchase, otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description, including any and all kinds of engines, dynamos, generators, pumps, and any and all kinds of machinery, any and all kinds of implements or articles of manufacture, and any and all kinds of mechanical apparatus.

Form 104.

ENAMELED AND STAMPED WARE.

To carry on the business of mining, smelting, casting, forging, rolling, tinning, galvanizing, enameling, coating and plating of metals, and of manufacturing, buying, selling, dealing in and contracting for the manufacture, sale, purchase and exchange of sheet metal and of articles made wholly or partly therefrom, enameled wares on sheet and other metals; kitchen and household wares and ornaments made from and upon metal of any and every kind; household furniture and furnishings, consisting of enameled, stamped, galvanized and other wares of iron, steel, tin or any other metal or substance and all articles made of or upon metal or other substance, including crockery, china, pottery and glassware, and to mine, manufacture, buy, sell and generally deal in all materials used in the manufacture of any of the above-described wares or in any business similar thereto or connected therewith.

Form 105.

ENGINEERING.

To carry on the business of mechanical engineers and dealers in and manufacturers of plants, engines and other machinery, tool makers, brass founders, metal workers, boiler makers, millwrights, machinists, iron and steel converters, smiths, builders, metallurgists, electrical, civil and water supply engineers, and to buy, sell, manufacture, repair, convert, alter, let or hire and deal in machinery, implements, rolling stock and hardware of all kinds; to build, construct and repair railroads, water, gas and electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any like work of internal improvement, public use or utility.

Form 106.**ENGINEERING.**

To design, construct, enlarge, extend, repair, complete, take down and remove, or otherwise engage in any work upon bridges, piers, docks, foundations, mines, shafts, tunnels, wells, water-works, lighthouses, buildings, railroads, canals and all kinds of excavation, and iron, wood, masonry and earth construction in all parts of the world, and to make, execute and take or receive any contracts or assignments of contracts therefor or relating thereto or connected therewith, and to receive in payment therefor cash or stock, bonds or other securities of any corporation with which such contracts may be made, and any and all other property of any sort whatsoever, and to hold or sell the same, and to subscribe to the capital stock or bonds of any such corporation.

Form 107.**ENGINE BUILDERS.**

(Kraus Engine Company.)

To construct, acquire, promote, maintain, improve, manage, develop, control, operate, purchase, sell or otherwise dispose of, lease, let, license to use, work, use and produce engines and motors, or any other article or appliance of a like nature, also works for the generation of power and other purposes, and transmission lines for the distribution or mechanical transmission of power to users.

To carry on the business of mechanical and constructing engineers and any business of a like nature, and to manufacture, produce, buy, sell, deal in and with all apparatus, appliances and things used in connection therewith, or with any inventions or patents held, owned or acquired by the corporation, or which may be necessary or convenient to effectuate these objects or any of them.

To manufacture, produce, acquire, own, deal in and deal with all machinery, apparatus, contrivances or parts thereof, and any materials or articles of any nature or kind useful or necessary in connection with any or all of the objects hereinbefore expressed, or of a character similar or analogous thereto.

To purchase, take, acquire, lease, hold, own, maintain, work, develop, sell or otherwise dispose of, mortgage, exchange and improve or otherwise deal in and with real estate or any interest and rights therein and in all kinds of property without limit as to amount; and to erect, construct, alter, maintain and improve lands, buildings or works of other description on any lands of the cor-

poration, or upon any other lands, and to repair, alter and improve existing buildings or works thereon.

To purchase or otherwise acquire, sell, mortgage, lease, grant licenses in respect of and otherwise deal in and with trade-marks, trade names, inventions, processes and letters-patent of the United States or of any other government, and with a view to the working and development of the same, to carry on any business, manufacturing or otherwise, that the company may deem calculated either directly or indirectly to attain these objects or any of them.

To carry on the business of contractors for the construction of all works and properties of private or public use and utility.

To enter into, make, perform and carry out contracts of every kind which a corporation organized under the business corporation law may enter into, and for any lawful purpose with any person, firm, association or corporation.

Form 108.

EXPLOITATION AND PROMOTION.

(International Exploitation Company.)

To purchase or otherwise acquire, own, hold and use, protect, prolong, receive and otherwise deal in and with, in the United States of America, and in any state, territory, colony or dependency thereof, in the District of Columbia and in any foreign country, any patents, patent rights, brevets d'invention, licenses, concessions, trade-marks, trade-names, secret processes and formulæ and the like, conferring an exclusive or non-exclusive or limited right to use any secret or other information as to any invention in relation to, and covering any patented invention or preparation of any and all nature and kind or generally any invention which may appear likely to be advantageous or useful to the company or necessary or convenient to effectuate any of the objects for which the company is organized or which may seem to the company capable of being profitably dealt with and to manufacture under or grant licenses or privileges in respect of or otherwise turn to account the same, and to expend money in experimenting upon and testing and in improving or seeking to improve any patents, inventions, rights or concessions which the company may acquire or propose to acquire.

To manufacture, acquire by purchase or otherwise, sell, lease, license or otherwise dispose of, deal in and with, all patented inventions, machines, machinery, articles, devices, apparatus and appliances or parts thereof, incidental to letters patent, patents, rights

and concessions owned or controlled by the company, and generally as may be necessary or convenient to effectuate the aforesaid objects or any of them, and which may be now or hereafter useful, convenient or which may be utilized or be capable of being used in and incidental to the business of the company.

To purchase, take, acquire, lease, hold, own, maintain, work, develop, sell, convey, mortgage, exchange and improve or otherwise deal in and with real estate or any interest and rights therein and in all kinds of property and chattels, without limit as to amount, and to erect, construct, alter, maintain and improve lands, buildings or works of any description on any lands so purchased or otherwise acquired, or upon any other lands, and to repair, alter and improve existing houses, warehouses or works thereon.

To promote or aid in the promotion of and to financially assist corporations for the purpose of manufacturing under any patents, processes or other rights of the company or for the purpose of developing the same or for any other purpose which the company shall consider likely to be of benefit or advantage to the company and to subscribe for the shares of the capital stock, debentures, bonds or other obligations of any such company or otherwise contract and deal with reference to the same.

Form 109.

EXPLOSIVES.

The purposes for which it is formed are to conduct the business of manufacturing, buying, selling and dealing in, and otherwise acquiring and disposing of, apparatus, tools, machinery, appliances, explosives, chemicals, compounds and other goods, wares and merchandise of every kind and description, used or capable of being used, in connection with mining or quarrying ores and minerals; also to manufacture, buy, sell, deal in and use alkalies and chemicals of every kind, and all articles and things used in the manufacturing, maintaining and working thereof.

Form 110.

EXPRESS BUSINESS.

To transfer, carry and transport goods, wares and merchandise and personal property of every kind and description, from or to any points or places in the United States or elsewhere, by means of electric or steam cars, vehicles, horses, wagons, boats, or any

other means or method of transportation; to contract or arrange with railroads, ferries, steamboats or other companies, and with individuals to transfer, carry and transport such personal property for and on behalf of this corporation; and generally to do and transact an express and transportation business, with all the rights, privileges and powers necessary or desirable for the transaction of such business or incident to the conduct of the same.

Form 111.

FARM PRODUCTS.

To produce, purchase, sell and deal in butter, cheese, eggs, milk, vegetables, poultry and other food, farm and dairy products, and the various materials entering into or used in the production thereof.

Form 112.

FARM AND DAIRY PRODUCTS.

To manufacture, sell and otherwise deal in condensed, preserved and evaporated milk and all other manufactured forms of milk; to produce, purchase and sell fresh milk and all the products of milk; to manufacture, purchase and sell all food products; to raise, purchase and sell all garden, farm and dairy products; to raise, purchase, sell and otherwise deal in cattle and all other live stock; to manufacture, lease, purchase and sell all machinery, tools, implements, apparatus and all other articles and appliances used in connection with all or any of the purposes aforesaid, or with selling and transporting the manufactured and other products of the company.

Financial Companies.

Of late years many companies have been formed for the purpose of engaging in financial operations. Some of these companies have been formed for the purpose of becoming permanent investors in stocks and securities of other companies, some for the purpose of controlling the management of other companies by ownership of a majority of their shares of stock, and some have been formed for the purpose only of promoting the organization or combination of other companies, being the medium through which the control of the stocks and securities of other companies is obtained. It has been found that large undertakings can be managed with greater

facility by means of such a company than by means of a syndicate of private individuals. Where such a company acts as a promoter in the organization of another company, it is subject to the same liabilities as an individual promoter.

“This class of companies, of French origin, is intended to take up such financial business as is inconsistent with the notions of legitimate banking, such as lending on securities not immediately convertible; finding the capital for public works; introducing to public notice other companies, and obtaining the necessary subscription of their capital. Judging from foreign precedents, the operation of these companies should be as far as possible unfettered. The secret of their success lies in the confidence reposed in their administration; their danger in the interest they are compelled to take in the companies they adopt, and for whose success, to a great extent, they stand responsible.” (Treatise on the [English] Companies Acts.—Latham Browne.)

Extracts from the certificates of incorporation of some companies recently formed for the above purposes follow. (See also form 131.)

In drafting the certificate of incorporation of a company of this class care must be observed not to encroach upon the powers exclusively conferred on banks and trust companies. (See p. 29, *ante*.)

Form 113.

FINANCIAL.

To carry on and undertake any business, undertaking, transaction or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commission men and agents, and in the course of such business to draw, accept, endorse, acquire and sell all or any negotiable or transferable instruments and securities, including debentures, bonds, notes and bills of exchange.

To issue on commission, subscribe for, acquire, hold, sell, exchange and deal in shares, stocks, bonds, obligations or securities of any public or private corporation, government or municipality, and the company shall have express power to hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock, bonds, debentures or other evidences of indebtedness created by any other corporation or corporations, and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

To form, promote and assist financially or otherwise, compa-

nies, syndicates, partnerships and associations of all kinds, and to give any guarantee in connection therewith or otherwise for the payment of money, or for the performance of any obligation or undertaking.

To acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular business concerns and undertakings.

Form 114.

FINANCIAL.

(Interim Bond Company.)

To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock, bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations of any state, territory or country.

To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or shares of the capital stock are held by the corporation, and to do any and all acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

To hold as principal or otherwise issue on commission, sell or dispose of any of the undertakings or resulting investments, and to act as the broker for any corporation or corporations, undertakings or propositions.

To form, promote and assist financially or otherwise companies, syndicates and associations of all kinds, and to give any lawful guarantee in connection therewith or otherwise for the payment of money or for the performance of any obligations or undertaking.

To manufacture, purchase or otherwise acquire goods, merchandise and personal property of every class, and to hold, own, mortgage, sell or otherwise dispose of, trade, deal in and deal with the same.

To acquire and undertake the good will, property, rights and assets, and the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock or bonds of the corporation or otherwise.

To enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

To borrow or raise money without limit as to the amount by the issue of or upon warrants, bonds, debentures, and other negotiable or transferable instruments or otherwise.

To apply for, obtain, register, purchase, lease or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of, any trade-marks, trade names, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes and the like, or any such property or rights.

To purchase, hold and re-issue the shares of its capital stock.

To conduct business in any of the states, territories, colonies or dependencies of the United States, in the District of Columbia, and in any and all foreign countries, to have one or more offices therein, and therein to hold, purchase, mortgage and convey real and personal property, without limit as to amount, but always subject to local laws.

To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

Form 115.

FINANCIAL.

To buy or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, and to invest, trade in and deal in any goods, wares, merchandise and property of every class and description, including patents and patent rights, inventions or other improvements, trade-marks, options, shares or rights in corporations, real property of any description, including mines, railroads, and also bonds, mortgages, securities of any kind or description or other evidences of indebtedness, and investments or investment securities of any kind or description whatever, or to act as the agent for the sale or purchase of any of the same, or for any other purpose connected with any of the said above-described powers; to promote corporations or enterprises of any character, including industrial enterprises, railroads, mines, real estate companies, banking institutions and all businesses or enterprises of any character, and to own and operate or finance the same; to aid in any manner any corporation or enterprise in which the company is interested; to endorse, underwrite or guarantee the stock, securities or undertaking of any corporation or persons.

Form 116.**FINANCIAL.**

The objects for which the company is formed are to purchase, receive, hold and own bonds, mortgages, debentures, notes, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness of any railroad company or railroad corporation, and, as incidental thereto, of any terminal, express, warehouse, elevator, street car, traction, electric light or power, steamship or other company, corporation or association, any of the securities of which may be owned by, or the property of which may be operated by, or in connection with the property of, any railroad company, or any part of whose stock, bonds or other securities are held or owned by any railroad company; to receive, collect and dispose of interest, dividends and income upon, of and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held or owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual ownership thereof, including the right to vote thereon; to do any and all acts and things tending to increase the value of the property at any time held by the company; to issue bonds and other obligations and to secure the same by pledging or mortgaging the whole or any part of the property held by the company; and to sell or pledge such bonds for proper corporate purposes. Nothing herein contained is to be construed as intended to form a banking company, a savings bank or a corporation intended to derive profit from the loan and use of money.

Form 117.**FIRE-PROOFING.**

To manufacture, buy, sell and deal in asbestos and all and every of the products and manufactures thereof or in which the same is used; all manner of materials and products used for or incidental to the making of fire-proof buildings and structures, and generally building materials of every sort and kind; materials manufactured for street and other pavements, for the insulation or protection of metal constructions and of electrical appliances and constructions of every sort, and also to construct, alter or repair or contract for the construction, alteration or repair of all manner of structures, conduits and public or private works, or any parts thereof.

Form 118.**FISHERIES.**

To acquire, purchase, run, hold, sell, lease and rent fishing licenses for pound nets, traps, weirs, set nets, fish wheels and other fixed appliances, and purse nets, drag seines and other seines, and movable appliances for catching or retaining fish.

To acquire, purchase, hold, sell, lease and rent locations upon which to construct and maintain pound nets, traps, weirs, set nets, fish wheels, and other appliances, whether fixed or movable, for catching or retaining fish.

To acquire, purchase, run, hold, sell, lease, rent, maintain and operate all needful or convenient appliances for catching fish by any means whatever; and for holding, freezing, packing, salting, canning and otherwise preserving and delivering, selling and transacting business with reference to the same.

To acquire, purchase, catch, take, buy, hold, store, pack, preserve, sell, export, dispose of and distribute fish of all kinds; and to engage in the propagation of salmon and of other food fishes.

To engage generally in the fish business in the waters of Oregon, Washington, Alaska, the Pacific Ocean and other waters.

To slaughter beeves and other animals, and to acquire, purchase, cure, store, pack, can, sell, distribute and dispose of meats, fruits and vegetables of all kinds.

To acquire, purchase, build, construct, maintain and operate cold storage and refrigerating plants, and to do a general cold storage and refrigerating business.

To do a general warehouse and storage business, and to issue, register, certify and guarantee warehouse receipts.

To acquire, purchase, own, maintain and operate steam, sailing and other vessels.

Form 119.**FISH PACKING.**

(Alaska Peninsula Packing Company.)

To acquire, purchase, catch, take, buy, hold, store, pack, preserve, sell, export, dispose of, and distribute salmon and other fish, of all kinds, and to engage in the propagation of salmon and other food fishes.

To acquire, purchase, hold, sell, lease, and rent locations upon which to construct and manage pound-nets, traps, weirs, set-nets, fish-wheels, and other appliances, whether fixed or movable, for catching and retaining fish.

To do a general warehouse and storage business, including cold storage, and to issue, register and certify warehouse receipts.

To do a general transportation business by land and sea; to construct or otherwise acquire, and to own, maintain and operate or to sell, lease or charter steam, sailing and other vessels; to construct or otherwise acquire, and to own, maintain and operate a railway or railways outside of the State of New Jersey; to construct or otherwise acquire, and to maintain and operate an electric lighting and power system or systems; to construct or otherwise acquire and to maintain and operate a telegraph or telephone line or lines outside the State of New Jersey, with all needful or convenient facilities and appurtenances, and to construct, acquire, maintain and operate any other means of transmitting information or intelligence, or for the distribution of electric or other energy for any purpose.

To do a general commission and merchandising business; to contract for and to buy, sell, store, transport or otherwise deal in merchandise of all kinds on its own account or as agent for others; to acquire, exercise or make contracts of any kind in relation to patent rights, inventions and trade-marks.

To do a general real estate and mining business; to buy, sell, rent, lease or otherwise deal in or utilize or employ mines, or mining privileges, water-power, riparian rights, and easements, timber lands and other real estate. To seek for, secure, store, transport, sell or otherwise deal in or dispose of all manner of mineral products; to lay out and improve town sites, and to supply the same with water or gas; to construct or otherwise acquire, and to maintain and conduct a hotel or hotels.

To engage in any business connected with the health, comfort or welfare of its employees; to supply by manufacturing or otherwise materials for its or their use, and to utilize or dispose of the by-products of its business; and generally to carry on any other manufacturing or trading business, exporting or importing, which can conveniently be carried on in conjunction with any of the matters aforesaid.

Form 120.

FLOUR.

To purchase and sell grain and cereals of every kind and to manufacture, buy and sell flour and other food articles manufactured from grain or cereals, and to acquire by purchase, lease or otherwise, and to own, sell, lease, mortgage, convey, improve and operate factories and elevators, buildings and manufactories for the production and storage of all kinds of goods that may be produced

from or in conjunction with grain or cereals of any kind; to buy, sell, trade and deal in the products of said manufactories or factories and in said grains or cereals in any state of their product.

Form 121.

FOOD PRODUCTS.

To purchase or otherwise acquire, to manufacture, market, prepare for market, sell, deal in, and deal with food products of every class and description, including cereals and cereal products, meats, fish, vegetables, fruit, soups, delicacies and all canned or preserved goods, and all food and other preparations.

To engage in any business whether manufacturing or otherwise which may seem advantageous or useful in connection therewith, and to manufacture, market or prepare for market any article or thing which the company may use in connection with its business.

In connection with the foregoing to manufacture, market and prepare for market, buy, sell, deal in, and deal with tin, and any products of tin, glassware, and any article of glassware, or any other article, receptacle, package or thing which may be useful in connection with the manufacture or marketing of the products of the company.

To protect the products of the company by trade-marks, trade names, or any distinguishing name or title, and as well to acquire, take over, or otherwise deal in patents, grants or other protection.

Form 122.

FREIGHT AGENTS.

General shipping and forwarding business, to-wit.: The receiving, handling, shipping, forwarding and transporting of goods, wares, merchandise and all classes of freight by land or by water.

Form 123.

FRUIT PLANTATION.

The planting, cultivating, growing, producing, buying, importing, selling, exporting and dealing in oranges, lemons and other citrous and tropical fruits, and also all kinds of vegetables; and to carry on the business of planters in all its branches.

To carry on and work the business of producers, cultivators and buyers of every kind of fruit and vegetables, mineral or other products of the soil.

To purchase or otherwise acquire, manufacture, prepare for market, market any such products, and to sell, dispose of and deal in the same either in their prepared, manufactured or raw state, and either by wholesale or retail.

To operate and maintain a packing house and canning factory for fruits and vegetables of all kinds, and to produce, buy or otherwise acquire and sell or otherwise dispose of the product of such packing and canning factory or factories.

Form 124.

FURNITURE.

To make, repair, alter, buy, sell, exchange, export, import, let, sublet, lease, rent, hire and generally deal in, as principal and on its own behalf, as well as agent or factor for others, all kinds of modern and antique furniture, rugs, carpets, curtains, tapestries, laces, embroideries, stamps, coins, medals, drawings, engravings, etchings, pastels, paintings and pictures of every kind, arms, silverware, jewelry, statuary, bronzes, relics, works of art, manuscripts, autographs, books, bric-a-brac, cut, decorated and other glass, articles of virtu, and all kinds of articles used or intended to be used, or capable of being used in furnishing or beautifying any private or public building, park or garden; and as principal and on its own behalf or as agents for others to plan, equip, furnish, beautify and decorate any public or private building, garden or park whatsoever; and to make valuations or appraisals of any articles, goods, wares or merchandise, or real estate, whatsoever.

Form 125.

GAS.

To sell and supply light, and to carry on the business of a gas works company in all its branches; to deal with, to manufacture, to render salable all products, by-products and residual products obtained in the manufacture of gas; to construct, manufacture, maintain works for holding, receiving, purifying and distributing gas, and all other buildings and works, meters, pipes, fittings, machinery, apparatus and appliances convenient or necessary for the business of the company; to manufacture, buy, sell, rent, deal in

stoves, engines and other apparatus and conveniences which may seem calculated directly or indirectly to promote the consumption of gas.

[Note.—As to the advisability of using this form for corporations operating in New Jersey, see *Richards v. Dover*, 61 N. J. Law, 400, 402, and cases cited in note to Section 6, p. 30, ante.]

Form 126.

GAS AND ELECTRIC.

(American Gas & Electric Company.)

To construct, purchase, lease and otherwise acquire, to hold, use, improve, maintain and operate, and to let, sell and otherwise dispose of, plants, factories, mills, pipe lines, works for producing or furnishing power, water, gas or electricity, tramways, street railways, bridges, boats, ferries, lines of navigation, docks, warehouses, hotels, stores, dwellings and all other works, manufactories, structures and improvements; and to acquire, construct, maintain and operate railroads, telegraph lines and canals not in the State of New Jersey.

Form 127.

GAS BURNERS, ETC.

To purchase, acquire, take, hold and own inventions, improvements, patents and applications for patents relating to hydro-carbon burners and gas generating burners.

To make, use, work, manage, maintain and operate, and license others to make and vend, hydro-carbon burners, and gas generating burners in any or all of the states, territories and possessions of the United States of America.

To manufacture and sell, and license others to manufacture and sell, sad-irons, soldering irons, shoe irons, edge irons, and bolt irons; braziers' tools and furnaces, plumbers' tools and furnaces, and other furnaces; water heaters, steam heaters and other heaters; annealing, roasting, tile and other ovens, gasoline engines, fire engines, and other engines; torches, burners, and all tools, implements, machinery and devices for producing and utilizing such articles or any of them.

To manufacture and sell, and license others to manufacture and sell, incandescent gasolene lamps, and other lamps, gas generating burners, hydro-carbon burners, and gasoline specialties, and

other articles and devices for producing and utilizing either light, heat or power, or any two, or all of them.

To purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, for money, property, or other value, or to issue in exchange therefor its own stock, bonds or other obligations; to act as a parent company in relation to such foreign corporations upon such terms and conditions as may be agreed upon with them, not in violation of the laws of this state, and if it so elect to establish and maintain branches, agencies or offices in any of the states, territories or possessions of the said United States of America.

Form 128.**GLASS.**

To manufacture, buy, sell, import, export, trade and deal in glass and glassware of any and all kinds and descriptions.

Form 129.**GRAIN ELEVATOR.**

To buy and lease lands, and to erect thereon buildings and machinery for the purpose of receiving, warehousing and delivering grain and other merchandise; to issue bonds, secured by a mortgage or mortgages upon the property and franchises of said company, with the proceeds of which to erect suitable buildings and purchase machinery for said purpose, and to fit up, occupy and use a grain elevator or elevators, and to carry on the business of receiving, handling and storing of grain and other merchandise and of issuing receipts for grain and merchandise received, and charging to and collecting from the owners or holders thereof reasonable charges for services done and performed in and about the receipt, handling and storage of grain and other merchandise.

Form 130.**HARDWARE.**

To engage in, continue, conduct and carry on the business of jobbers, wholesalers and dealers in heavy and shelf hardware; railroad, street railway, steamboat, manufacturer's, mill, factory, foundry, forge, shop, machine shop, builders', electrical, plumbers', miners', steamfitters', gasfitters' and other supplies; tools, cutlery,

saddlery and saddlers' goods, round and bar iron, bar and tool steel; vehicles; sporting goods, machines and machinery, powder, dynamite and other explosives; and other merchandise, whether related or unrelated to the above enumerated lines of goods; to manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with, goods, wares and merchandise, steel manganese, coke, copper, lumber, timber, and any articles made wholly or in part of wood, metal, mineral, alloy, glass, leather, oil, rubber, fiber, or any modifications or combinations of any of said substances, or of any artificial compound; to construct bridges, buildings, machinery, engines, docks, elevators, water works, gas works, and electric works, and to sell the same, or otherwise dispose thereof, or to establish, maintain and operate the same; to establish, maintain and operate foundries, machine shops, repair shops, and other shops and factories for the construction and repair of the several articles herein mentioned, and any other articles.

Form 131.

HOLDING COMPANY.

To acquire, construct, manage, operate and control railroads, canals and other transportation agencies, in any of the states of the United States, outside of the State of New Jersey, and in other countries; subject, however, to such limitations and restrictions as are or may be provided by local laws with respect thereto.

To undertake, subscribe for, acquire, hold, sell, exchange and deal in the stocks, bonds and securities of corporations created and organized for any or all of the purposes aforesaid.

To promote and assist financially or otherwise companies or associations engaged in the construction of railroads, canals and transportation agencies, outside of the State of New Jersey, and to create and issue lawful guarantees for the payment of moneys or performance of obligations or undertakings in connection therewith, and to acquire the franchises, good will, property and assets, and undertake the liabilities of persons, associations or corporations in connection with such undertakings, and to pay the same in cash, stock, bonds or otherwise.

Form 132.

HOLDING COMPANY.

To acquire by purchase, subscription or otherwise, and to hold as investment any bonds or other securities or evidences of in-

debtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey or of any other state, territory or country.

To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other state, territory or country, and while owner thereof, to exercise all the rights, powers and privileges of ownership.

To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other state, territory or country, and while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

See also forms under head of "Financial."

Form 133.

HOLDING COMPANY.

To subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise dispose of, shares of capital stock, bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of corporations of the State of New Jersey, or of any other state, including corporations which own, operate or lease, or which are organized for the purpose of constructing, owning, operating or leasing, street surface railroads, elevated railroads, rapid transit railroads, underground railroads, tunnels, bridges, tunnel railroads, railway terminals or railroads of any character or description in the City of or its suburbs or in territory adjacent thereto, and corporations engaged in furnishing or organized to furnish electricity for any lawful purpose, or power in any form for use upon or which may be used upon street railroads or other railroads, and corporations whose funds are or may be invested in the shares of stock, bonds or other securities of any corporations of the character hereinbefore described; to exercise in respect of any such shares of stock, bonds and other securities of corporations any and all the rights, powers and privileges of individual ownership, including the right to vote.

Form 134.**HOTEL.**

To build, erect, construct, manage and occupy buildings for hotel purposes, dwelling houses, apartment houses and other structures; to buy, own, operate, lease and occupy lands and buildings for hotels, apartment houses and dwelling houses and business structures of all kinds for the accommodation of the public and of individuals; to keep, manage, conduct and carry on hotels, apartment houses, dwelling houses, restaurants and places for the accommodation of the public and of individuals, and to purchase, sell, lease and mortgage buildings, structures, lands and real and personal property of every description.

Form 135.**HOTEL.**

To purchase, take on lease or otherwise acquire lands or buildings in _____ or elsewhere; to erect on such lands as aforesaid, or any of them, hotel or hotels, cottages and any other necessary buildings and works, and to use, convert, adapt and maintain all or any of such lands, buildings and premises to and for the purposes of hotels and inns, with their usual and necessary adjuncts.

To fit up and furnish the same, and to carry on the business of hotel and inn-keepers and a livery stable keeper.

Form 136.**ICE.**

To carry on the business of collecting, cutting, purchasing, storing, preserving upon land or water, selling and manufacturing ice, together with the transaction of all legitimate business incidental thereto or in anywise connected therewith.

Form 137.**INSURANCE AGENTS.**

To act as agents or brokers in the business of marine, fire, life, accident and fidelity insurance, in the business of giving protection

to principals and employers and any other kind or class of insurance in all its branches.

To act as agents or representatives of owners or other persons or corporations having or claiming to have any interest in merchandise, vessels, cargoes, freight or other subjects of insurance.

Form 138.

INVESTMENT COMPANY.

To issue shares, stock, debentures, debenture stock, bonds, and other obligations; to invest the money so obtained in, and to hold, sell and deal with stock, shares, bonds, debentures, debenture stock and securities of any government, state, corporation, public or private, or other body or authority; to vary the investments of the company; to mortgage or charge all or any part of the property and rights of the company, including its uncalled capital; to make advances upon, hold in trust, issue on commission, sell or dispose of any of the investments aforesaid, or to act as agent for any of the above or like purposes.

Form 139.

INVESTMENT TRUST.

To raise money by the issue of shares or otherwise, and to invest the moneys so raised in the purchase of, or otherwise to acquire and hold any of the investments following, that is to say, any stocks, bonds, debentures, shares, scrip or securities issued or having any guarantee by any government, municipality, trust, local authority, or other body, incorporated or unincorporated, public or private, of the United States, or in any country or state under the protection of the United States, or any stock, bonds, debentures, shares, scrip or securities issued or having any guarantee by any corporation or company incorporated, constituted or carrying on business in the United States or elsewhere.

To acquire and hold, or otherwise deal with any stocks, bonds, debentures, shares, scrip or securities of any government, state or authority, municipal, local or otherwise, and any bonds, debenture stocks, scrip, obligations, shares, stocks or securities of any company established for the purpose of any railway, tramway, gas, water, dock, telegraph, electric lighting or other undertaking.

To borrow or raise money by the issue or sale of any bonds, mortgages, debentures, or debenture stock of the company, and to invest any money so raised in any such investments as aforesaid.

To acquire any such investments as aforesaid by original sub-

scription, underwriting, participation in syndicates or otherwise, and whether or not fully paid up, and to make payments thereon as called for, or in advance of calls or otherwise, and to underwrite or subscribe for the same conditionally or otherwise, and either with a view to investment or for resale, or otherwise, and to vary the investments of the company, and generally to sell, exchange, or otherwise dispose of, deal with, and turn to account any of the assets of the company.

To negotiate loans, to offer for public subscription, or otherwise aid or assist in placing any such investments as aforesaid; to give any guarantee in relation to any such investments issued by or acquired through or from the company.

To offer for public subscription any shares or stocks in the capital of, or debentures or debenture stock or other securities of, or otherwise to establish or promote, or concur in establishing or promoting any company, association, undertaking, or public or private body.

To guarantee the payment of dividends or interest on any stocks, shares, debentures, or other securities issued by, or any other contract or obligation of any such company, association, undertaking or public or private body.

To purchase, take on lease, or in exchange, hire, or otherwise acquire any real or personal property which the company may think necessary or desirable, and to sell, improve, manage, develop, lease, mortgage, dispose of, turn to account, or otherwise deal with all or any part of the company's property.

To take, make, execute, or enter into, commence, carry on, prosecute, and defend all contracts, agreements, negotiations, legal and other proceedings, compromises, arrangements and schemes, and to do all other acts, matters and things which shall at any time appear conducive or expedient for the protection of the company as holders of or interested in any such investments and securities as aforesaid.

Form 140.

IRON.

To buy, sell, deal in and deal with iron and iron ore, and all like or kindred products; to mine, manufacture, prepare for market, market and sell the same, and any articles or product in the manufacture or composition of which metal is a factor, including the acquisition by purchase, mining, manufacture or otherwise of all materials, supplies and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

To purchase, take on lease, or otherwise acquire any mines, mining rights and land in the United States or elsewhere, and any interest therein, and to explore, work, exercise, develop and turn to account the same; to quarry, smelt, refine, dress, amalgamate and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the company's objects; to buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with mining operations or required by workmen and others employed by the company.

Form 141.

JEWELRY.

To manufacture, buy, sell, deal in, deal with, market and prepare for market, goods, wares and merchandise of every class and description, and in particular watches, and parts thereof, including both movements and cases, canes, umbrellas, opera glasses, jewelry, gold and silverware, and novelties of all kinds.

Form 142.

KNIT GOODS.

To manufacture, buy, sell, import, export, trade and deal in hosiery, underwear and other goods from wool, cotton, flax, hemp, silk or any other material that can be spun into a thread, and the manufacture and sale of garments, or cloth of any description.

Form 143.

LAMPS.

To manufacture, buy, sell, and deal in lamps, lamp fixtures, gas fixtures, all kinds of lighting devices, electrical devices and appliances, and such other articles as are usually manufactured, bought, sold or dealt in by manufacturers or dealers in a similar line of business.

Form 144.

LAND AND DEVELOPMENT.

To acquire by purchase or otherwise, own, hold, buy, sell, convey, lease, mortgage or encumber real estate or other property, personal or mixed.

To survey, subdivide, plat, improve and develop lands for purposes of sale or otherwise, and to do and perform all things needful and lawful for the development and improvement of the same for residence, trade and business.

To purchase, construct, lease, operate and maintain electric lighting and power plants, buildings, constructions, machinery, appliances, equipments, fixtures, easements and appurtenances.

To purchase, construct, lease, operate and maintain telephone lines and lines for electric light and power purposes.

To furnish electricity for power and lighting purposes and all appliances incident or necessary thereto.

To purchase, construct, lease, operate and maintain tramways, rights of way, easements and appurtenances.

To construct, purchase, or otherwise acquire, maintain, repair and operate water works, and to sell, lease, or rent water and water rights and privileges.

To buy, sell and generally trade in, store, carry and transport all kinds of goods, wares, merchandise, provisions and supplies.

To acquire by discovery, location, lease, license, bond, option, purchase, franchise, grant, gift, device, conveyance, agreement or otherwise, and to hold, possess, enjoy, construct, repair, develop, mine, work, operate and exploit, lead, iron, coal, placer or lode gold, silver or other mines, tunnels and mining and tunnelling property, and any right, title or interest therein, as also such lands, mills, mill sites, tunnel sites, buildings, constructions, machinery, plant, appliances, equipment, fixtures, dump, dump-rights, riparian rights, water and ditch rights, ditches, flumes, pipes and pipe-lines, railways, tramways, rights-of-way, easements, appurtenances, real estate, patent rights, secret processes, franchises, licenses, charters and other property or rights to property, real, personal or mixed, as may be deemed by the directors for the time being to be necessary or appropriate for the proper working, development, exploration or enjoyment thereof; the treatment or reduction of ores or minerals; the receiving, shipping or transportation of ores, minerals or supplies to or from any part of the workings upon the company's property, or for the accomplishment of any other purpose for which this company is formed.

Form 145.

LAND AND GENERAL INVESTMENT.

To acquire by purchase, lease, exchange, hire or otherwise, lands or any interest therein; to erect and construct houses, buildings or works of every description on any land of the company, or upon any other lands, and to rebuild, enlarge, alter and improve existing

houses, buildings or works thereon to convert and appropriate any such land into and for roads, streets and other conveniences, and generally to deal with and improve the property of the company; to sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings and other property of the company; to undertake or direct the management and sale of the property, buildings and lands; to transact on commission the general business of a real estate agent.

Form 146.

LAUNDRY.

To carry on the business of a steam and general laundry, and to wash, clean, purify, scour, bleach, wring, dry, iron, color, dye, disinfect, renovate, and prepare for use all articles of wearing apparel, household, domestic and other linen, and cotton and woolen goods and clothing, and fabrics of all kinds, and to buy, sell, hire, manufacture, repair, let on hire, alter, improve, treat and deal in all apparatus, machines, materials, and articles of all kinds, which are capable of being used for any such purposes.

Form 147.

LEAD COMPANY.

To acquire by purchase, lease or otherwise, and to own, sell, lease, mortgage, convey, develop, improve and operate mines; to own, acquire, construct, enlarge, improve, operate and carry on works for smelting, parting, refining or working any base or precious metals, or the products thereof, and factories for the manufacture of lead in any and all commercial and medicinal forms and qualities, and for the manufacture of pyroligneous acid, acetate of lime and charcoal by the process of destructive distillation, carbon dioxide, magnesia and the products thereof, together with factories or works for the purpose of producing, refining or manufacturing linseed and castor oils, and vegetable, mineral or other oils and the products thereof, and compositions, articles and apparatus from and in connection therewith, and to manufacture the products of said mines and said substances; and generally to carry on such manufacturing or other business as may be necessary or convenient for the business and operations of the company, or any part thereof; to buy, sell, trade and deal in the products of said mines, factories, works and properties in their crude form, or in any state or stage of production or manufacture, as well as the properties them-

selves, including gold and silver bullion and base and precious metals, lead and oils of every kind and quality, and in any form or condition, and such other substances, products and materials as are commonly or conveniently used, manufactured, bought or sold in connection with said business or businesses, or any part or parts thereof, or as are necessary or convenient in and about or connected directly or indirectly with the transaction of the business of the said company.

Form 148.

LEATHER.

The manufacture and sale of leather, lumber and belting, including the acquisition and use in the manner and to the extent permitted by law of all necessary and convenient lands, timber, bark, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacturing and sale of leather, lumber and belting, as aforesaid; and in general the engagement in any and all lawful business whatever, which may be found convenient or necessary in connection with the business of manufacturing and selling leather, lumber and belting as aforesaid, in the State of New Jersey and other states and territories of the United States and elsewhere.

Form 149.

LIGHTING AND HEATING.

To manufacture, sell and lease to other corporations and to public and private consumers, gas and oil machines, appliances and devices of all kinds for the production, supply and use of light, heat and power, and all goods, wares, merchandise, property and substances now used in the production thereof, or incidental thereto, or that hereafter may be invented, discovered or become known therein, and to manufacture, contract for, and furnish light, heat and power to other persons, firms and corporations, public and private.

Form 150.

LIQUORS.

To make, buy, sell and deal in spirits and liquors of all kinds and sorts, and to buy, sell and deal in any and all material from

which spirits of any kind may be made; and all material necessary and incidental to the business of distillation, and in general to carry on the business of distillers in all its branches, and any business incidental thereto. To purchase, refine, sell, deal in and manufacture molasses and sugars of all kinds and all products of the sugar cane.

Form 151.

LOCAL EXPRESS.

To gather, receive, distribute and deliver goods, merchandise, parcels, packages, baggage and express matter, and do a general cartage and delivery business in the City of _____ and elsewhere; to contract with express or railroad or other companies or corporations for the collection, transportation or distribution of goods, merchandise, parcels, packages, baggage and express matter in said City of _____ and elsewhere, and to perform such contracts.

[See also Transportation (Local).]

Form 152.

LUMBER.

To acquire, hold, improve, lease and sell timber, farming, grazing, mineral and other lands and the products thereof; to build, construct, maintain and operate saw mills, plants and works for the development of such lands and for the handling, preparing and rendering commercially available of the various products thereof.

Form 153.

LUMBER.

To acquire, hold, improve, lease and sell timber, farming, grazing, mineral and other lands and the products thereof; to build, construct, maintain and operate plants and works for the development of such lands, and for the handling, preparing and rendering commercially available of the various products thereof.

To manufacture lumber, iron, steel, manganese, coke, copper and other materials; and all or any articles consisting, or partly consisting, of wood, iron, steel, copper or other materials, and all or any products thereof.

To acquire, own, lease, sell, use or develop any lands contain-

ing coal or iron, manganese, stone or other minerals, or oil, and any wood lands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone and other minerals and timber front from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy or sell, or otherwise to deal or to traffic in wood, lumber, iron, steel, manganese, copper, stone, ores, coal, coke and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

Form 154.

MACHINERY.

The manufacture, sale, dealing and trading in manufacturer's and mill supplies, engines, machinery and electrical appliances.

Form 155.

MACHINERY AND TOOLS.

To carry on the business of mechanical and electrical engineers, toolmakers, machinists, founders, metal workers, smiths, builders, fitters, cutlers, carriers and merchants, and any other business or businesses which may seem calculated, directly or indirectly, to enhance the value of or render profitable any of the company's property or rights, or conducive to any of the company's objects.

To buy, sell, make, repair, alter, let on hire and deal in apparatus, machinery, hardware and articles of all kinds capable of being used for the purpose of any business herein mentioned or likely to be required by customers of any such business.

Form 156.

MALT.

The manufacturing, selling and dealing in malt and its by-products or products incidental thereto, and all other products in the manufacture of which malt is or may be used, and the business incidental thereto.

Form 157.**MANUFACTURING.**

To purchase, lease, or otherwise acquire lands and buildings in or elsewhere for the erection and establishment of a manufactory or manufactories and workshops, with suitable plant, engines and machinery, with a view to manufacture, purchase, sell or otherwise deal in , either directly or indirectly, through the medium of agents or otherwise; in particular to acquire the business now carried on by , with the land and buildings, plant, stock and other properties connected with the business, and also the good will of the said business, and the benefit of all pending contracts, and the stock-in-trade thereof, together with the patents and other rights and privileges relating to said business, vested in or held on behalf of them; to purchase or otherwise acquire patents, patent rights and privileges, improvements or secret processes for or in any way relating to all or any of the objects aforesaid, and to grant licenses for the use of, or to sell or otherwise deal with any patents, patent rights and privileges, improvements or secret processes acquired by the company; to sell, lease, mortgage or otherwise deal with real and personal property of the company.

Form 158.**MATCHES.**

The business of manufacturing, producing, purchasing, selling and dealing in and with matches, and other means and conveniences for producing, retaining, conveying and communicating fire, and the by-products of such business, and all materials that now are or hereafter may be used in or in connection with such business, including the purchase, lease or other acquisition and development of woodlands, and the manufacture, sale and disposition of any surplus product thereof, and the manufacture, production, purchase, sale of and dealing in, and with boxes and receptacles for holding, packing, shipping and using the products of the business above indicated.

Form 159.**MEAT AND CATTLE.**

To carry on the business of dealers in meat, live cattle and sheep, and also that of dealers in cattle and sheep generally, and in all branches of such respective trades or businesses.

To buy and sell at wholesale or retail in the United States or elsewhere, all kinds of meat, and generally to carry on the trade or business of a meat dealer in all its branches.

To acquire by purchase or otherwise, cattle ranches and sheep farms, and to carry on the trades or businesses of cattle raisers and sheep farmers, tanning and warehousing generally, preserved meat manufacturers, dealers in hides, fat, tallow, grease and other animal products.

To erect and build abattoirs, cold storage warehouses, sheds and other buildings necessary or expedient for the purposes of the company.

To purchase, charter, hire, build, or otherwise acquire, steam and other ships or vessels, and to employ the same in the conveyance of passengers, mails and merchandise of all kinds, and to carry on the business of ship owners, barge owners and lightermen in all its branches.

Form 160.

MERCANTILE AGENCY.

To establish, maintain and conduct a general mercantile agency; to carry on every branch of business usually transacted in connection therewith, including the obtaining and acquiring by purchase or in any other lawful manner, information, statistics, facts and circumstances of, relating to, or affecting the business, capital, debt, solvency, credit, responsibility and commercial condition and standing of any and all individuals, firms, associations and corporations engaged in or connected with any business, occupation, industry or employment in any part of the civilized world, and particularly in and throughout the United States and Canada, and to dispose of, sell, loan, pledge, hire and use in any and all lawful ways the information, statistics, facts and circumstances so obtained and acquired.

Also to establish, maintain and conduct a general collection business for the recovery, enforcement and collection of accounts, bills, debts, dues, demands and obligations and claims of all kinds; and to establish and conduct a general business of making and issuing contracts to secure the faithful performance of any mercantile or commercial contract or agreement, and for the prompt payment of any debt or obligation due under or arising from or out of any mercantile or commercial transaction.

Also to acquire by purchase or otherwise, and to establish, maintain and conduct a general printing, publishing, bookbinding and advertising business, and to prepare and distribute newspapers, books, pamphlets, directories, catalogues, reports, ratings, digests,

lists and other printed matter of interest or use to merchants, traders, bankers and lawyers.

Form 161.

MERCHANDISING, EXPORTING AND IMPORTING.

(D. N. Carrington & Company.)

To purchase and sell merchandise of every kind and nature for exportation from and importation into the United States to and from all countries foreign thereto, and more particularly to and from the United States and the various countries of Central and South America and Mexico, including the purchase and sale of domestic merchandise in domestic markets and of foreign merchandise in foreign countries; such transactions to be for the account of the corporation, and to constitute as one of said purposes the doing of a general foreign and domestic exporting and importing merchandise business.

To buy and sell such merchandise in the manner above described for the account of others, constituting a general foreign and domestic commission business and as incidental to such purposes to make advances on consignments of such merchandise, to hypothecate such merchandise, to charter, purchase, or otherwise acquire any interest in sail or steam vessels both on account of the corporation, and for the account of others, for the carrying of freight or passengers between the United States and countries foreign thereto, and generally to do each and every act and thing necessary to be done in order to realize the purposes herein set forth.

To undertake and carry on any business transaction or operation commonly undertaken or carried on by contractors, capitalists, financiers, agents and merchants, and generally to institute, enter into, carry on, assist, promote or participate in financial, commercial, mercantile, industrial and other business, works, contracts, undertakings and operations.

To hold in trust, issue on commission, make advances upon, sell or dispose of any of the undertakings or resulting investments aforesaid, and to act as agent for any of the above or like purposes.

To obtain the grant of, purchase or otherwise acquire any concessions, rights, patents, privileges, exclusive or otherwise, authorities, undertakings or businesses, or any right, option or contract in relation thereto, and to perform and fulfill the terms and conditions thereof, and to carry the same into effect, operate thereunder, develop and turn to account, maintain or sell, dispose of and deal with the same.

To act financially, commercially and generally as agent for other corporations, partnerships and individuals for any purpose for which this corporation might be organized under the provisions of the aforesaid act of the Legislature of the State of New Jersey and acts amendatory thereof and supplemental thereto, and to appoint in all parts of the world agents and representatives for the purpose of carrying on any and all of the objects of the corporation.

Form 162.

MEXICAN SECURITIES AND INVESTMENTS.

To examine and determine the legality and validity of titles and value of any property or properties, or enterprise to be operated or negotiated in the Republic of Mexico.

To furnish evidence and information as to the Mexican and American laws bearing upon the stability and legality of property interests, and enterprises located in the Republic of Mexico.

To perform any and all necessary acts in the incorporation of any corporation or corporations to be formed, or intended to be formed, for the conduct of any business or enterprise in the Republic of Mexico or elsewhere.

To render all legal aid to those investing or contemplating investing in property interests or enterprise in the Republic of Mexico or elsewhere.

To mine and prepare for market iron, copper, silver, gold, lead, zinc, coal and all other mineral and clay substances.

To manufacture, refine, buy and sell sugar, iron, steel, fire brick, lumber and all other products and by-products made from any and all metals, metallic compounds and clays.

To acquire by purchase, lease or otherwise, timber lands, mineral lands, agricultural lands, and mines of all kinds of minerals, clays and mineral substances.

To acquire, construct, operate and maintain water courses, hydraulic works, mills, manufactories, furnaces, evaporators or any device for light, power and heat, to be operated by either electricity, compressed air, water, steam or air, and to construct dwellings, and all other works and appurtenances suitable or necessary for mining or manufacturing.

To manufacture and deal in goods, wares, merchandise and personal property of every description and nature.

To establish a permanent exhibition of Mexican and American products and in connection therewith a commission business for the sale and exchange thereof.

Form 163.

MINING.

(Mutual Treasure Company.)

To search and prospect for, and to obtain information as to, and to acquire the whole of or any interest in, mines, mining rights, waters, water rights, riparian, and other rights, and any lands or waters containing or supposed to contain minerals, metals, precious stones, treasure of any and all kinds, or other valuable products; and to test, work, exercise, develop and turn to account the same, and to mill, produce, smelt, manufacture, prepare for market, buy, sell, and merchandise in any such products as aforesaid.

To search for, get, work, raise, and make marketable and use, sell or dispose of gold, silver, copper, nickel, gems or other valuables, substances, or products on, within or under any property either owned or leased by the company, and to grant prospecting, mining and other licenses and rights or privileges for any such purposes.

To develop the resources of any mines or territories, and to seek for and to turn to account opportunities for the employment of capital by way of search or exploration for hidden treasure, and in particular to prospect, examine, explore and cause to be made, examinations, explorations and investigations as to the presence and recovery of treasure or valuables of any kind in any place or places whatsoever.

To purchase, charter, hire, build, or otherwise acquire any steam or other ships or vessels, or any share or shares therein, with all necessary or convenient engines, furniture, tackle, gear, diving apparatus, stores and equipment, and to employ the said ships or vessels in exploration and search for treasure of any and all kinds by means of dragnets, grapplers, diving appliances, and any other means useful in connection with the discovery and recovery of the same.

To construct, purchase, lease and otherwise acquire, to improve, maintain and operate, and to let, sell, and otherwise dispose of, works for producing or furnishing power, water, gas or electricity, tramways, bridges, boats, ferries, lines of navigation, docks, warehouses, tunnels, shafts, hotels, stores, dwellings and all other works, manufactories, structures and improvements, and to acquire, construct, maintain and operate mechanical appliances of whatever nature or kind useful in connection with exploration for hidden treasure.

To construct or cause to be constructed any works necessary or suitable for developing, improving, turning to account, or increasing the value of any property and in particular to open up means of communication to construct or cause to be constructed

roads, railroads, mills, dams, sluices and any and all other works and improvements.

To carry on and undertake any business, undertaking, transaction or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commission men and agents, and in the course of such business to draw, accept, endorse, acquire and sell all or any negotiable or transferable instruments and securities, including debentures, bonds and notes.

To issue on commission, subscribe for, acquire, hold, sell, exchange and deal in shares, stocks, bonds, obligations or securities of any public or private corporation, government or municipality, and the company shall have express power to hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock, bonds, debentures or other evidences of indebtedness created by any other corporation or corporations, and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

To form, promote and assist financially or otherwise, companies, syndicates, partnerships and associations of all kinds, and to give any guarantee in connection therewith or otherwise for the payment of money, or for the performance of any obligation or undertaking.

To acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular business concerns and undertakings.

Form 164.

MINING.

To promote, purchase, lease, acquire, develop, operate, sell and deal in, in any part of the United States of America and of Canada, Mexico and other foreign countries, mines and quarries of all kinds and any interests therein, and in any and all products thereof; to mine, mill, reduce, smelt, manufacture, prepare for market, buy, sell and merchandise in copper, gold, silver and other ores, and also copper, gold, silver and other metals and metallic compounds, coal, coke, charcoal and other fuels, and all products and by-products, mediates and immediates, of all ores and minerals, but not to buy gold or silver bullion or foreign coins.

To promote, purchase, lease, acquire, develop, build, construct, repair, enlarge, extend, improve, equip, complete, maintain and operate, rent or sell outside the limits of this state, tunnels, shafts,

conduits, water courses, docks, wharves, reservoirs, dams, hydraulic works, water works, gas works and oil wells, coking and charcoal plants, car, engine and machine works, mills, factories, furnaces, reduction works, smelters, shops, warehouses, hotels, dwellings and other houses, buildings, structures, conveniences and establishments.

Form 165.

MINING.

To purchase, take on lease, or otherwise acquire any mines, mining rights and land in _____ or elsewhere, and any interest therein, and to explore, work, exercise, develop and turn to account the same; to quarry, smelt, refine, dress, amalgamate and prepare for market, ore, metal and mineral substances of all kinds, and to carry on any other operations which may seem conducive to any of the company's objects; to buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with mining operations, or required by workmen and others employed by the company; to construct, carry out, maintain, improve, manage, work, control and superintend any roads, ways, railways, bridges, reservoirs, water courses, aqueducts, wharves, furnaces, mills, crushing works, hydraulic works, factories, warehouses, and other works and conveniences which may seem directly or indirectly conducive to any of the objects of the company, and to contribute to, subsidize, or otherwise aid or take part in any such operations.

Form 166.

MINING.

To acquire, own, enter or lease mines and mineral lands of every kind, nature and description, also to acquire, own, enter or lease mill sites, water rights and terminal facilities. To work, prospect or develop mines and mineral lands of every nature or description, either for itself or other companies, corporations or individuals upon such terms and for such remuneration as it shall deem fit and proper, and to accept, take and hold mineral lands and claims of every kind and nature, either as an entirety or any interest in the same; and to buy, sell, own or control stock of other corporations, as it deems fit and proper. To do everything that may be necessary or proper in the conduct of its business in the way of developing, prospecting, locating, acquiring, buying and sell-

ing mineral lands and mining claims of every kind, nature and description, and working such mines, and the production of ores and minerals therefrom, and in reducing such ores and minerals to the most profitable merchantable value, and in doing the same to contract, build, buy, sell, own and operate all necessary mills, smelters, machinery, roads, railroads, tramways, ditches, flumes and such other property as shall be fit and necessary in carrying out the objects herein stated. To buy, sell or lease mines and mining property of all kinds and property of every kind, nature and description, useful or necessary in operating and maintaining the same, and in reducing the ores and in refining the minerals taken therefrom upon commission, whether such commission is paid in money or otherwise. To erect buildings, operate sawmills and engage in trade of every kind, both in stores and provisions, steam and sail transportation, road building and engineering, freighting and carrying.

Form 167.

MORTGAGE INVESTMENT.

To purchase or otherwise own and deal in stocks, bonds, mortgages, debentures, securities and obligations of every nature, and to acquire, own, hold, lease, manage, dispose of and deal in real and personal property of every kind and nature, both within and without the State of New Jersey; to receive, collect and dispose of interest, dividends and income upon, of and from any of the stocks, bonds, mortgages, debentures, securities, obligations and other property held or owned by it, and to exercise in respect to all such stocks, bonds, mortgages, debentures, securities and obligations and other property any and all rights, powers and privileges of individual owners thereof; to do any and all acts and things tending to increase the value of the property at any time held by the corporation; to furnish capital, material, etc., in the organization and development of corporations and business enterprises; to borrow money for use in its corporate business, and to secure the same by obligations, pledges, mortgages, or otherwise; to issue bonds and debentures, and to secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held by the corporation, and to sell or pledge such bonds and debentures for corporate purposes as and when the board of directors shall determine.

To build upon or otherwise improve and develop real estate owned or held by the corporation, and to examine and guarantee the title to lands.

To act as the agent for leasing, managing, mortgaging, buying,

selling and improving real estate; and to act as agent in buying and selling stocks, bonds, mortgages, debentures, securities and obligations of every nature, and to collect interest or dividends thereon; to act as agent in the management and investment of estates or funds of any nature, with full powers of agency in the premises, and to act under appointment made by power of attorney or otherwise in any matter, transaction or thing whatsoever; to guarantee the payment of principal and interest of mortgages and other securities, and in general to make any contract of guaranty which the directors may deem advisable.

Form 168.

MUSICAL INSTRUMENTS.

To purchase and otherwise acquire, and to hold, sell, lease or otherwise dispose of musical instruments, music boxes, appliances and materials, and give musical instruction, with authority to purchase, acquire, hold and dispose of the stock, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stock, bonds or other obligations.

Form 169.

NEWSPAPER.

To carry on business as proprietors and publishers of newspapers, journals, magazines, books and other literary works and undertakings and especially to take over the publication known as the _____, to carry on business as printers, book-sellers, bookbinders, stationers, photographers, photographic printers, stereotypers, electrotypes, lithographers and any other business or manufacture that may seem expedient; to undertake and transact all kinds of business relative to the gathering and distribution of information of every sort and kind to the same extent that a natural person might or could do, and in connection therewith to acquire by purchase or otherwise, construct, maintain and otherwise deal with land and submarine telegraphs, including in such expression telephone and all other electrical or other contrivances for transmitting messages by signal.

Form 170.

NEWSPAPER AND PUBLISHING.

To acquire, print, publish, conduct and circulate or otherwise deal with any newspaper or newspapers or other publications, and

generally to carry on the business of newspaper proprietors and general publishers; to carry on, if and when it shall seem desirable, the trade or business of general printers, lithographers, engravers and advertising agents; to build, construct, erect, purchase, hire, or otherwise acquire or provide any buildings, offices, workshops, plant and machinery or other things necessary or useful for the purpose of carrying out the objects of the company.

Form 171.

NICKEL.

To manufacture nickel, copper, iron, steel, manganese, cobalt, platinum, sodium, palladium, lumber and other materials, and all or any articles consisting or partly consisting of nickel, copper, iron, steel, manganese, cobalt, platinum, palladium, sodium, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing nickel, copper, iron, manganese, stone, or other ores, or coal or oil, and any woodlands or other lands or water rights or power for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone, and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or traffic in, nickel, copper, cobalt, platinum, palladium, sodium, iron, steel, manganese, stone, ores, coal, coke, wood, lumber, and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

Form 172.

OIL.

To produce, purchase, transport, store and sell crude petroleum and its products, and to aid other companies and parties in the production, transportation, storage, manufacture and sale of the same. The corporation may acquire, hold, manage and dispose of any stock, shares, bonds, and other interests in or issued by any corporation, joint stock company or limited partnership association engaged in or aiding the producing, transporting, storage, refining and selling of crude petroleum or its products or in any business incidental thereto.

Form 173.**OIL.**

To acquire by purchase or otherwise, to sell, lease and otherwise dispose of, in any of the United States of America, or colonies or dependencies thereof, or in any other part of the world, lands, concessions, grants, rights, powers and privileges which may seem to the company capable of being turned to account, and to prospect for petroleum and other mineral oils, and to mine, quarry, manipulate and prepare for market metals, ores and mineral substances of all kinds.

To promote, construct, maintain, lease, own and operate transportation line or lines by land or water and (outside the State of New Jersey) railroads and pipe lines in any part of the world, either directly or indirectly, and to do all other acts and things necessary to effectuate these objects or any of them.

Form 174.**OPTICAL GOODS.**

To carry on the business of opticians, to manufacture, purchase and sell eye-glasses, opera-glasses, field glasses, magnifying lenses for all purposes, and apparatus for carrying on the business of opticians and dealers in optical goods generally.

Form 175.**PAINTS AND PAINTERS' SUPPLIES.**

To carry on the manufacture, mechanical treatment, preparation, purchase and sale of paints, painters' supplies and kindred articles; the manufacture, mechanical treatment, preparation, purchase and sale of casein for paint purposes, and the purchase and sale of general merchandise of every description, including the acquisition by purchase, manufacture or otherwise of all materials, machinery, supplies, and other articles necessary or convenient for use in connection with the carrying on of the business herein mentioned or any part thereof.

Form 176.**PAPER.**

To maintain, conduct and manage the business of manufacturing, producing, purchasing, selling and dealing in any and all kinds of

paper, and any and all ingredients, products and compounds thereof, and any and all materials that now are or hereafter may be used in, or connected with such manufacture, including the manufacture and production of wood pulp and any other fiber; and as a part of and incident to such business, the mining of iron pyrites, clay, sulphur, coal, agolite, and any fibrous minerals and materials, the purchase, lease or other acquisition and the development of woodlands and the manufacture, sale and disposition of any surplus product of said woodlands; and the production and sale of any surplus or by-products in said business.

Form 177.

PAPER.

To carry on the business of importers of, dealers in and manufacturers of paper, paper materials and paper substitutes of all kinds, and of the raw substances, pulps, preparations, mixtures, solvents and combinations thereof for any purpose whatsoever, and articles and substances made from any kind of paper, pulp, mixture, combination, solvent, preparation or material used in the manufacture or treatment of paper or paper substitutes; also, the business of stationers, lithographers, publishers, wall and ceiling paper manufacturers, and paper stainers; also the business of importers and dealers in and manufacturers of cotton, silk, woolen, linen, jute, textile, fibrous and all other materials and the yarns and other products and materials made therefrom, and all kinds of fabrics, substances, articles and things manufactured from such yarns, products and materials; the importing of, dealing in and manufacturing of all kinds of imitation leathers and rubbers, waterproof goods and all other articles made from any such fabrics, substances, articles and things; also the business of manufacturers and importers of and dealers in paints, varnishes, printing inks, and all other articles and things which can be conveniently manufactured, imported or dealt in by persons carrying on any of the above businesses.

Form 178.

PASSENGER AND BAGGAGE TRANSFER.

The purchase and sale of horses, the manufacture, purchase and sale of carriages, whether drawn by animal power or propelled by steam, electricity or other motive power, the leasing and hiring of buggies, carriages, coupes, coaches, carts, wagons, automobiles,

motor vehicles, whether drawn by animal power or propelled by steam, electricity or other motive power; the leasing and letting for hire of horses; the transferring, delivering and storing of all kinds of freight, baggage and other commodities; the boarding of horses and other animals; the storage and care of all kinds of vehicles; the conducting and carrying on of a general livery; boarding stable, and passenger, baggage and freight transfer business at the City of _____ and at various other cities, towns and villages in the State of _____, together with all other business connected therewith, or in any way incidental thereto.

Form 179.

PATENT MEDICINES.

To acquire and take over as a going concern the undertaking of _____, and all or any of its assets and liabilities, and in particular the recipes, formulæ and full information as to the processes of manufacturing, and the right to manufacture and deal in certain medicinal preparations known as _____.

To carry on the manufacture and sale of the said medicines and preparations, and generally to carry on the business of manufacturers, buyers and sellers of and dealers in all kinds of medicines and medical preparations and drugs whatsoever.

To carry on all or any of the businesses of chemists, druggists, chemical manufacturers and importers, and manufacturers of and dealers in pharmaceutical and medicinal preparations.

To manufacture, buy, sell, and deal in mineral waters, wines, cordials, liquors, soups, broths, and other restoratives or food, specially suitable or deemed to be suitable for invalids and convalescents.

To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals, and by granting prizes, rewards and donations.

Form 180.

PIANOS.

To acquire and take over as a going concern the business of manufacturing and selling pianos, organs and other musical instruments, heretofore carried on under the style or firm name of _____

at _____ and elsewhere, and all or any of the assets and liabilities of said firm in connection therewith.

To carry on the business of manufacturers, dealers in and exporters of pianos, organs, any and all musical instruments and otherwise, and also any and every other article and thing which may now or hereafter be conveniently manufactured, sold or dealt in, in connection therewith or otherwise.

To manufacture, produce, buy, sell, let, hire, deal in and deal with musical instruments of all kinds, and any and all parts thereof.

To manufacture, buy, sell, deal in and deal with any and all kinds of machinery, materials, supplies, implements, articles, appliances, substances and fabrics incidental to or entering into the manufacture of the same, or any part thereof, or to effectuate the objects and powers set forth in this certificate, or any of them.

Form 181.

PIANOS AND ORGANS.

To manufacture, purchase or otherwise acquire, to import, export, lease, sell, and generally deal in pianos, organs and musical instruments of all kinds and descriptions and all supplies, articles, appliances and materials related thereto or in any manner necessary or convenient in said business.

Form 182.

TO PURCHASE AND WORK PATENTS.

To purchase or acquire the letters patent of the United States of America granted to A. B., covering the manufacture of _____, and apparatus and machinery therefor, dated _____, Number _____ and Number _____ respectively, and any subsequent improvement or improvements in and upon the said manufacture, apparatus, and machinery which may be invented by the said A. B., pending applications therefor, and all extensions of the said letters patent or any of them, and also the several letters patent granted to the said A. B. by the governments of _____ and any other letters patent which may hereafter be granted to the said A. B. by the United States of America, or by the government of any country whatsoever, either in respect of the inventions comprised by the herein-

before mentioned letters patent, or any of them, or any such further inventions or improvements as before mentioned, and all extensions with reference thereto respectively; to carry on the business of a manufacturer of _____; to acquire by purchase or otherwise for the business of the company in the State of New Jersey or elsewhere, any estate or estates, land or buildings, mills, plant, machinery, patents, patent rights, secret processes or other things, and to erect and maintain, or reconstruct and adapt, buildings, mills, plant, machinery, and other things found necessary or convenient for the purposes of the company; to obtain letters patent or similar privileges in this or any other country for any invention in connection with the company's manufacture or business; to sell, lease, or otherwise dispose of the lands, buildings, plant, property and effects of the company; to sell the patents, patent rights, or secret processes to be acquired by the company, or any of them, and to grant licenses to use the same to any person or persons, company or companies.

Form 183.

"SPECIAL PATENTS" COMPANY.

To purchase or otherwise acquire any interest in any patents, brevets d'invention, licenses, concessions and the like conferring an exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention in relation to (e. g., the production, treatment, storage, application, distribution and use of electricity, and of any apparatus therefor), or generally any invention which may seem to the company capable of being profitably dealt with, and in particular to acquire from A. B., of _____ the benefit of certain existing inventions in relation to, etc.

To use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such patents, brevets d'invention, licenses, concessions, and the like, and information aforesaid.

To carry on business as (here insert specification of business connected with such invention).

Form 184.

PIPE FOUNDRY.

To carry on the business of manufacturing, producing, preparing, buying and selling, or otherwise dealing in cast-iron pipe of any and all kinds; to manufacture and sell castings and fittings; to mine or purchase ore and to manufacture therefrom iron and

steel; to purchase pig iron and to convert such iron and steel into marketable products, and to market the same; to build, purchase, own, lease, or otherwise hold houses, stores, furnaces, mills, foundries and structures of every description necessary or proper for the use and conduct of the business herein contemplated, including the buying and selling or otherwise disposing of the same; to mine coal and make coke necessary for the company's use; to manufacture, purchase or otherwise acquire, and to hold, mortgage, pledge, sell, assign, transfer or otherwise dispose of any of the products, materials, goods, wares, merchandise and property of every class and description; to store and warehouse any of its products, and to issue warehouse receipts therefor; to purchase, build, acquire, own and operate, except in the State of New Jersey, such railroads connected with its plants as may be deemed necessary, and to acquire, own and operate steam and other vessels, pipe lines, and telegraph and telephone lines, so far as the same shall be deemed necessary in its business; to manufacture hydrants, valves and other supplies used in connection with iron or steel pipe; to build, construct, acquire, own and operate water, gas, electric, pneumatic and hydraulic plants.

Form 185.

PHOTOGRAPHIC SUPPLIES.

To manufacture, buy, sell, use, deal in, and deal with cameras, photographic lenses, unsensitized and sensitized papers, unsensitized and sensitized films, dry plates and all other sensitized articles, toning and fixing solutions, and all other preparations used in the photographic arts, appliances, implements, apparatus and all other articles used in the photographic arts, including the acquisition by purchase, by manufacture or otherwise, of all material, supplies, appliances, apparatus, machinery or other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof, and for such purposes to carry on the business of manufacturers of and dealers in photographs, pictures, prints, engravings and other works of art, and of photographers, printers, paper makers, engravers, bookbinders, reproducers, and publishers of works of art, books and other publications.

Form 186.

PLUMBERS' SUPPLIES.

To carry on the trade or business of manufacturing, producing, adapting, preparing, buying and selling and otherwise dealing in

any and all kinds of plumbing and sanitary fixtures and supplies; including lead pipe, traps, sheet lead, and solder and plumbers' wares in iron, lead, brass, wood, marble, earthenware or other material; and to manufacture, produce, purchase, adapt, prepare, use, sell or otherwise deal in any materials, articles or things required for, in connection with, or incidental to, the manufacture, use, purchase and sale of or other dealing in any and all of the aforesaid wares and articles.

Form 187.

POTTERY.

To manufacture, buy, sell, trade and deal in any and every kind or class of pottery or earthen products, or articles composed in whole or in part of kaolin, clay or earthy matter; to mine, manufacture, prepare, buy, sell, deal and trade in any and every gaseous or other ingredient, material or substance entering into such manufacture, or used in conjunction therewith, or used in or about businesses similar to or relating thereto.

Form 188.

POWDER AND DYNAMITE.

To manufacture, buy, sell, deal in and deal with corn and vegetable products, chemical compounds, dynamite, gunpowder, cellulose and its derivatives and compounds, extracts, chemicals, raw and manufactured materials, and all like or kindred products; to manufacture, treat, prepare for market, market and sell the same and any articles or product, in the manufacture or composition of which they, or either of them, are a factor; to buy, sell, treat, manufacture, refine, manipulate, import, export and deal in all substances, vegetable, chemical or otherwise, apparatus, products and things capable of being used in any such business as aforesaid, or required by any customers or persons having dealings with the company.

Form 189.

PROMOTION.

To construct, operate and control transportation undertakings, terminals and facilities; to develop any properties, undertakings, industries, enterprises or companies for transportation by land or

water, provided, however, that this company shall not engage in any business which shall require the exercise by it of the right of eminent domain within the State of New Jersey, or, except as permitted by local laws, without the said state.

To construct, lease, own, operate or sell transportation line or lines, by land or water, in any state or country, either directly or through the ownership of stock of any corporation, but always subject to the local laws of such state or country.

To carry on the business of contractors for the construction of all works and properties of public or private use or utility.

To undertake, subscribe for, acquire, hold, sell, exchange, deal in and deal with stocks, bonds, obligations or securities of any corporation, government or municipality.

To hold, as principal or otherwise, issue on commission, sell or dispose of any of the undertakings or resulting investments, and to act as agent for any of the above or like purposes; to act as the agent for any corporation or corporations, undertakings or propositions.

To form, promote and assist financially or otherwise, companies, syndicates and associations of all kinds, and to give any lawful guarantee in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking.

Form 190.

PROMOTION AND TRADING.

To take over, purchase and acquire all the assets, claims and equities of every nature of the copartnership firm of _____, including the good will and the name of said firm; to acquire, develop, improve, operate and manage, and to dispose of or otherwise deal with manufacturing properties, timber properties, plantations and other agricultural properties, and to carry on any kind of trading, manufacturing, mining, chemical and agricultural business; to acquire, hold, use, sell, assign, lease, mortgage or otherwise dispose of letters patent of the United States, or any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes relating to or useful in connection with any business of the corporation; to promote the organization of corporations and other business enterprises for any of the foregoing purposes, or for any other lawful purpose; to carry on the business of engaging, receiving, transporting and delivering merchandise upon freight or for hire between any ports of the world, and of building and chartering vessels therefor, and of operating vessels in such service, and of acting as agent for vessels employed in such serv-

ice; to construct, acquire, operate, maintain and dispose of storage, transportation and all other facilities and conveniences whatsoever and wheresoever in connection with any of the purposes herein referred to; to develop any properties, water-powers, industries, manufacturing or merchandising enterprises and companies for transportation by land or water in which this corporation may be interested; but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To act as financial, commercial and general agent for other corporations and persons for any purpose for which this corporation might be organized under the provisions of the aforesaid acts of the Legislature of the State of New Jersey, and acts amendatory thereof and supplemental thereto.

Form 191.

PUBLIC WORKS.

To construct, equip, improve, work, develop, manage, or control public works and conveniences of all kinds, including railways, docks, harbors, piers, wharves, canals, reservoirs, embankments, improvement, sewage, drainage, sanitary, water, gas, electric light, telephonic, telegraphic and power supply, works and hotels, warehouses, markets and public buildings, tunnels, bridges, viaducts and all other works or conveniences of public use or utility; to apply for, purchase or otherwise acquire any contracts or concessions for or in relation to the construction, execution, carrying out, equipment, improvement, management, administration or control of public works and conveniences, and to undertake, execute, carry out, dispose of or otherwise turn to account the same; to purchase or otherwise acquire, issue, reissue, sell, place and deal in shares, stocks, bonds, debentures and securities of all kinds, and to give any guaranty or security for the payment of dividends or interest thereon or otherwise in relation thereto.

[See also Contractors and Builders.]

Form 192.

PUBLISHERS.

To manufacture, publish, buy, sell and deal in all kinds of books, periodicals and stationer's supplies, as well as all raw materials, which enter into the composition thereof, and generally to do any and all things incidental to said business.

Form 193.**PUBLISHING.**

To publish, print, bind, manufacture, issue, purchase, sell, deal in and otherwise turn to account books, magazines, publications, newspapers, pamphlets, maps, charts, engravings, lithographs, etchings, wood-cuts, electrotypes, stereotypes, photographic prints, photolithographs, pictures and illustrations whether colored or without color, and by whatsoever process or processes the same may be produced, whether now existing or hereafter to be discovered or invented; and, generally, to carry on the business of printers, binders, lithographers, stereotypers, engravers and publishers, in any and all of the states, territories, colonies, dependencies and districts of the United States of America and in any and all foreign countries.

Form 194.**PUBLISHERS.**

To acquire, print, publish, conduct, circulate, sell, distribute, deliver and otherwise deal in and with any magazine, magazines, periodical, periodicals, journal, journals, newspaper, newspapers, pamphlet, pamphlets, book, books, and other publications of any and every description whatsoever; and generally to carry on the business of magazine, periodical, journal and newspaper proprietors and the business of general publishers and printers; to undertake and transact all kinds of business relative to gathering and distributing news and information of every kind and description; to carry on the stationery business, and any other merchandising business, book making, book manufacturing, book selling, book-binding, designing, engraving, lithographing, die casting, stereotyping, electrotyping, and the making and printing of illustrations of every kind and character, by any and every process whatsoever; to secure, acquire, hold, own, use and sell copyrights and all rights of a similar nature or description; and to acquire, own, deal in and deal with all materials or articles of any kind and description used or useful in connection with any or all of the objects hereinbefore expressed, or of a character similar or analogous thereto.

To purchase or otherwise acquire, hold, own, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of the shares of the capital stock or any bonds, obligations or other securities or evidences of indebtedness, good will, rights, franchises, assets and property of every and any kind, or any part thereof, of other corporations, domestic or foreign, and if desirable to issue in exchange therefor the stock, bonds or other obligations of this com-

pany; to assume the liabilities of other corporations, and to operate their properties either in the name of this company or of any other corporation.

Form 195.

QUARRY.

The quarrying, mining, cutting, sawing, finishing, setting, purchasing, selling and dealing in marble or other stone.

Form 196.

RAILROAD.

(To be operated out of New Jersey, see notes to Section 6, p. 14, ante.)

To construct, maintain and operate a railroad for public service and the conveyance of persons and property from a point on
in the , to , in the same
, the length of such road, as near as may be, being

.

To construct, maintain and operate other railroads to be worked by steam, electricity, or any other motive power.

To purchase or lease and maintain and operate any railroad or railroads, whether now or hereafter constructed or completed.

To construct, acquire, maintain and operate tramways to be worked by steam, electricity or any other motive power.

To construct and own or lease and operate cars of any and every description with locomotives, electrical motors or any other motive power on any railroads and tramways.

To construct, acquire, maintain and operate telegraph and telephone lines and other means of communication along the lines of its railroads for railroad uses, and in connection with any railroads and tramways, and otherwise, and for other uses.

To establish, acquire, own or lease and operate stage lines and other lines for the transportation of passengers, goods and merchandise by vehicles upon land.

To establish, acquire, own or lease and operate express lines for the special carrying of parcels and other articles, moneys and valuables upon any railroads, tramways, roads or rivers, or otherwise.

To construct, acquire, own or lease and maintain and operate pneumatic tubes and other devices for the transmission and delivery of mails and parcels and other articles.

To construct, acquire, own or lease and operate and manage

pipe lines and other structures necessary or useful in the transmission of mails and parcels and other articles and freight or passengers.

To construct, acquire, own or lease and operate and manage ferries, wharves, piers, docks, harbors, canals, locks, dams and other structures necessary or useful in connection with any transportation business or other business.

To construct, acquire, own or lease and operate and manage station houses, depots, warehouses, terminals and terminal facilities, hotels, restaurants, parks, gardens and pavilions.

To manufacture, acquire, own or lease and use, sell, or otherwise dispose of rolling stock and other railway and tramway equipment and appliances and land vehicles of any description, and steamboats, sailing boats and other vessels.

To manufacture, acquire, own or lease and use, sell or otherwise dispose of engines, motors, machinery and apparatus, tools, implements and appliances necessary or useful in connection with any transportation business or other business.

To construct, acquire, own or lease and operate, sell, or otherwise dispose of plants and machinery, apparatus and appliances for the production, distribution and supply of gas and electricity for lighting and heating, and for the supply of electricity, steam, water and air, for power or other purposes, and for the supply of refrigeration.

To construct, acquire, own or lease and operate saw mills and works for the manufacture and sale of lumber and other products of timber and the manufacture of charcoal.

To acquire, own or lease, develop, improve, operate, manage, sell, exchange or otherwise dispose of, real and personal estate of any description, necessary or useful in connection with any business of the corporation.

Form 197.

RAILROAD APPLIANCES.

To manufacture, install, and deal in, mechanical, electrical, pneumatic, or any other system of signaling, interlocking, block-signaling, and safety appliances for railroads of every description.

To manufacture, install, and deal in, frogs, switches, crossings, switch stands, and any other devices to be used on or about railroads.

To manufacture, install, and deal in, any and all kinds of apparatus, equipment, and structures which may be used in, or as incidental to, the transportation of persons or property in any manner whatsoever.

Also to carry on a general machine shop business, a general blacksmithing shop business, including drop-forging of every description, a general foundry business, a general carpenter shop business, a general pattern shop business, and to sell, install, and deal in, any and all articles, apparatus and devices, which it may manufacture, own or control.

Form 198.

RAILROAD CARS.

The manufacture and sale of railway, passenger, freight and street cars, the manufacture and sale of car trucks, car wheels and any and all parts of cars and car trucks, including truck frames and all the accessories thereto, and all car equipments and appliances and specialties; the manufacture and sale of all the products of steel or of iron or of other metals, and of wood, or of any or all other materials; the manufacture and sale of iron castings, steel castings, journal bearings, malleable iron; the manufacture and sale of all kinds of springs, including car springs; the manufacture and sale of all kinds of water pipes and gas pipes or other pipes; to manufacture, purchase or otherwise acquire, to hold, mortgage, pledge, sell, assign and transfer or otherwise to dispose of, to invest, trade, deal in and with the products, materials, goods, wares and merchandise and property of every class and description, including the right to enter into or upon any and all mercantile business or businesses, and for that purpose to acquire by purchase, lease or otherwise stores or property available therefor, and to operate and maintain any and all stores or warehouses or business houses necessary or expedient for such purpose; to make, purchase, sell and deal in manufactured articles and to acquire and dispose of rights to make and use the same; to purchase, lease or otherwise acquire all or any part of the business and assets of any person, firm, association or corporation now or hereafter engaged in a business similar to that proposed to be carried on under this certificate of incorporation, and in the purchase of any such business or assets to assume any and all liabilities that may be then existing upon any such business or assets so purchased; to purchase or otherwise acquire mines and mining lands; to mine any and all metals, to engage in mining in all its branches, and to sell or dispose of the products of such mining; to engage in smelting in all its branches; to purchase or otherwise acquire lumber lands, to cut and mill lumber, to establish and operate lumber mills and to sell and dispose of and deal in lumber, and to engage in the lumber business in all its branches; to establish and operate rolling mills; to acquire by lease, purchase or otherwise any and all real

estate necessary and convenient for the establishment and operation of rolling mills and to operate and maintain the same; to acquire or construct railroads (other than railroads within the State of New Jersey), steamships or vessels; to use, operate and maintain the same.

Form 199.

RAILROAD CONSTRUCTION.

The construction of electric and other railways and the undertaking of the construction of railways, and the doing of all things and the making of all contracts reasonably incident thereto; the dealing in stocks, bonds and other securities of railroad companies, and the purchasing, holding, pledging and selling, or contracting to purchase, hold, pledge or sell the same; the dealing in real estate, and the purchasing, holding, selling, renting, leasing, or taking by gift or devise, or acquiring in any way and by any manner, right or title any real estate; the selling or renting of railroad property; procuring the organization of railroad corporations within or without this state; and the acquisition of franchises for any railroad company.

Form 200.

RAILROAD CONTRACTORS.

Carrying on within the State of New Jersey and the adjacent State of New York and every portion thereof the business of contracting with any person or any corporation having the power or franchise to build and construct railroads or other works of improvement within said states, or either of them, to build, construct, equip, enlarge or complete elevated, surface or underground railroads or other improvements in any part or portion thereof for any corporation or person and to receive as payment, in whole or in part therefor, bonds or shares or securities of railroad companies or other corporations, and to sell, hypothecate or otherwise dispose of the same, and, for the purpose of said business, to lease, purchase, hold, assign, convey, mortgage and exchange real or personal property or contracts.

Form 201.

RAILROAD EQUIPMENT.

(American Brake-Shoe & Foundry Company.)

To manufacture appliances usable in the construction, maintenance and operation of railroads; to manufacture and build houses,

structures, engines, cars and other equipment for railroads; to organize, manage and maintain a bureau for making expert inspections and investigations, as to the use, application and results of any and all kinds of appliances and arts adapted for or usable in the construction, maintenance and operation of railroads; to construct, equip, improve, work, develop, manage and control works and conveniences of all kinds, including water, gas, electric light and power supply, and to contract for and sell the same and the use thereof to any person or persons natural and artificial; to manufacture, produce, generate, accumulate, use, sell, supply and distribute electricity, gas, water, compressed air and air in any form for power, and any and every means for the transmission and distribution of power, gas, water, electricity and light for any and all purposes; to manufacture metal castings of all kinds; to do a general foundry and machine business; to do manufacturing of every kind; to do mining of every kind; to acquire, own and transfer all kinds of real, personal and mixed property that may be necessary, fit or proper in and about the carrying out of any and all of the objects for which the corporation is established; to construct, maintain and operate such buildings, machinery and manufacturing plants as may be necessary, fit or proper in the furtherance of any or all of the objects for which the corporation is established; to purchase, improve and sell lands.

Form 202.

REALTY.

To purchase, lease, hire or otherwise acquire real and personal property, improved and unimproved, of every kind and description, and to sell, dispose of, lease, exchange, rent, convey and mortgage said property, or any part thereof: To acquire, hold, lease, manage, operate, develop, control, build, erect, maintain for the purposes of said company, construct, reconstruct or purchase, either directly or through ownership of stock in any corporation, any lands, buildings, offices, stores, warehouses, mills, shops, factories, plants, gas houses, machinery, rights, easements, permits, privileges, franchises and licenses, and all other things which may at any time be necessary or convenient in the judgment of the Board of Directors for the purposes of the company. To sell, lease, hire, exchange, rent, or otherwise dispose of the lands, buildings or other property of the company, or any part thereof.

Form 203.**REALTY.**

To take, acquire, buy, hold, own, maintain, work, develop, sell, convey, lease, mortgage, exchange, improve and otherwise deal in and dispose of real estate and real property or any interest and rights therein, without limit as to amount; to take, acquire, buy, hold, own, sell, hire, lease, mortgage, pledge and otherwise deal in and dispose of all kinds of property, chattels and chattels real, without limit as to amount; to lend money on bonds secured by mortgages on real estate or upon personal property, or to lend money and make advances from time to time on bonds secured by mortgages for future advances on real estate or upon personal property; to acquire by purchase, lease, exchange, hire or otherwise, lands or any interest therein; to erect, construct, alter, maintain and improve houses, buildings, sewers, drains, or works of other description on any lands of the corporation, or upon any other lands, and to rebuild, alter and improve existing houses, buildings or works thereon; to convert and appropriate any such lands into and build and form roads, streets or other public places and conveniences, and generally to deal with and improve the property of the corporation; to sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings and other property of the corporation; to undertake and direct the management and sale of all property, buildings and lands of the corporation, or otherwise; to transact on commission, the general business of a real estate agent.

Form 204.**REALTY.**

To acquire to the same extent as natural persons and without limit as to amount, by purchase, lease, exchange, hire or otherwise, lands, improved or unimproved, tenements, hereditaments, chattels, real or personal, or any interest therein; to erect and construct houses, buildings, sewers, drains or works of every description on any land of the company or upon any other lands; to rebuild, enlarge, alter or improve existing houses, buildings or works thereon; to subdivide, improve and develop lands for purposes of sale or otherwise; to convert and appropriate any such land into and for roads, streets and other public places and conveniences, and to do and perform all things needful and lawful for the development and improvement of the same for any lawful purpose, and generally to deal with and improve the property of the company and of other parties; to own, hold and maintain any property acquired

by the company; to sell, convey, lease, release, let, exchange, mortgage or otherwise encumber or dispose of the lands, houses, buildings, hereditaments, appurtenances, chattels and other property of the company; to equip, furnish, conduct, operate, manage, lease and maintain hotels, apartment houses, warehouses, or any kind of building for dwelling, amusement, recreation, charitable, religious, or business purposes; to undertake or direct the management and sale of the property of the company, real and personal; to sell, assign, release, hold, or satisfy mortgages which may become the property of the company; to loan on bond or mortgage or otherwise, or to advance money to, and to enter into contracts and arrangements of all kinds with contractors, laborers, skilled or otherwise, builders, property owners and others; to carry on in all their respective branches the businesses of builders or contractors; to make, enter into, perform, carry out or cancel contracts for constructing, demolishing, altering, decorating, equipping, fitting up and improving buildings of every description; to do a general real estate business on commission or otherwise, and to transact all such business as may be incidental thereto or arise therefrom, the same as an individual or natural person.

Form 205.

REALTY.

To make and enter into, perform and carry out any and all manner and kind of contracts, agreements and obligations by or with any person or persons, corporation or corporations, and with or by this corporation, for the erection, construction, alteration, decoration, maintaining, furnishing, equipment, fitting up, improvement, work, development, repair, management or control of any building, hotel, edifice, dock, wharf, canal, tunnel, warehouse, grain elevator or other construction of any and all kind whatsoever, or any integral part thereof, or for the purpose of sale of any and all materials therefor, upon the property of this corporation, or otherwise, to erect, construct, equip, improve, rebuild, enlarge, alter, work, develop, repair, manage, conduct or control new buildings, hotels, stores, edifices, docks, wharves, canals, tunnels, warehouses and grain elevators, including the erection, construction, building, equipment, improvement, development, management or control of work of all kinds and character, and the purchase and sale, import and export of all kinds of materials for the purposes aforesaid; to convert land into and for roads, streets and other conveniences; to manufacture, buy, sell, trade and deal in all and every kind of material, product, manufactured or unmanufactured, iron, steel,

brass, lead, wood, brick, cement, granite, stone and other products and minerals, including the quarrying of stone, and the manufacture of all kinds of materials and products; to erect, construct, maintain and equip, and to buy, own, sell, lease, mortgage, convey, improve and operate factories, and elevators, buildings, stores and manufactories, for the production and storage of all kinds of goods, articles and merchandise; to buy, sell, trade and deal in the product of all manufactories or factories, and to buy, sell and trade in all kinds of articles that may be suitable and proper for any of the businesses aforesaid, or that may be used in conjunction therewith; to buy, acquire, hold, use, employ, mortgage, convey, lease and dispose of grants, patent rights, letters patent, processes, devices, inventions, trade-marks, experience, formulæ, good will and other rights; to take, acquire, buy, hold, own, hire, maintain, control, manage, work, develop, sell, convey, lease, mortgage, pledge, exchange, improve and otherwise deal in and dispose of real estate and real property, or any interest and right therein and all other kinds of property, chattels and chattels real, without limit as to amount in any state of the United States, and in all foreign countries, and to make, issue and deliver therefor, or to raise money for the purchase thereof, its obligations or stock, or both; to lend money for itself, or as agent, on bonds secured by mortgage on real property or upon personal property, and to lend money and make advances from time to time on bonds secured by mortgage for future advances on real estate or upon personal property; to construct, maintain, manage and control buildings and the leasing of the rooms, offices or apartments therein; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of the capital stock of any other corporation or corporations created under the capital laws of this state, or of any other state or country, and to exercise while the owner of such stock all the rights, powers and privileges, including the right to vote thereon, which natural persons, being the owners of such stock, might, could or would exercise, and to issue in exchange therefor its own stock, bonds and other obligations; to do and transact all acts, business and things incident to or relating to or convenient in the above things, as principals, agents or contractors, and by or through agents, and either alone or in conjunction with others; to acquire, complete or dispose of contracts or agreements relating to or connected with the acquiring, buying, selling, leasing, letting, disposing of or mortgaging real estate or buildings and improvements in connection therewith; to negotiate and make, either as principal or broker or agent, contracts or other agreements relating to the making, taking or placing of building and other loans in connection with real estate, and with improvements thereon, or to be placed thereon; to transact on commission the general business of a real estate agent

or broker; to transact the business of an exchange, to list securities approved by its directors acting under its by-laws, to be dealt in by members of such company upon its floor in such manner and to such extent as its by-laws may prescribe, including the authority to list and have dealt in by its members all manner of securities based upon real estate values, including municipal bonds as well as its own bonds or debentures to be issued as provided in its by-laws.

Form 206.

RESTAURANTS.

To carry on the business of owning, leasing and operating restaurants, buying and selling cigars and tobacco in every form, the purchase and sale of liquors by wholesale and at retail; conducting and leasing news-stands, and buying and selling books, papers, magazines and other articles in connection therewith; to provide and conduct newspaper rooms, reading and writing rooms, dressing rooms, telephones and other conveniences for the use of customers and others; to grant to other persons or corporations the right or privilege to carry on any kind of business on the premises of the company on such terms as the company shall deem expedient or proper; to conduct and operate and to acquire and to convey by lease or otherwise the right to conduct restaurants upon vessels plying upon any of the rivers or harbors of the United States or upon the deep seas, together with all and every kind of business in connection therewith; to buy, sell, manufacture, repair, alter and exchange, let on hire, export and deal in, all kinds of articles and things which may be required for the purposes of any of the said businesses or commonly supplied or dealt in by persons engaged in any such businesses, or which may seem capable of being profitably dealt with in connection with any of the said businesses; to do any or all of the things herein set forth to the same extent as natural persons might or could do, in the States of New Jersey and New York, and in and upon any of the waters of either, and all of the states and territories of the United States, or the waters of the United States, or in or upon the deep seas.

Form 207.

RIDING AND DRIVING ACADEMY.

(Metropolitan Riding Club.)

To enter into, make, perform and carry out contracts of every kind which a corporation organized under the business corporations

law may enter into, and for any lawful purpose with any person, firm, association or corporation.

To issue bonds, debentures or obligations of the company from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage, pledge, deed of trust or otherwise.

To purchase, hold and reissue the shares of its capital stock.

To conduct business in any of the states, territories, colonies or dependencies of the United States, in the District of Columbia, and in any and all foreign countries, to have one or more offices therein, and therein to hold, purchase, mortgage and convey real and personal property, without limit as to amount, but always subject to local laws.

To maintain, conduct and carry on a club for the promotion of riding and driving, including the maintenance of a clubhouse and riding academy for the necessary or convenient use, accommodation, recreation, benefit and instruction of the patrons and such persons as may from time to time be permitted to use same and for the stabling, storage and other accommodation of horses, carriages and vehicles of every nature or kind, including harness, saddles and horse furniture or saddlery generally.

To carry on the business of importers, buyers, sellers, at public and private sale, dealers in and with horses, coaches, carriages, wagons and vehicles of every kind, however propelled, and of harness, saddlery, horse furniture and of all other articles and things useful or convenient for the proper carrying out of the objects hereof or of any of them.

To purchase, take on lease, acquire, own or otherwise hold and possess land and premises with the appurtenances thereunto belonging without limit as to amount and to erect, construct, alter, maintain and improve all buildings now or hereafter to be built thereupon so as to render them suitable or convenient for the purposes of a riding and driving club or academy, whether of a permanent or temporary nature, which may seem directly or indirectly conducive to the objects hereof or any of them.

Form 208.

ROPE, CORDAGE, ETC.

(Henry C. Kelly Company.)

To manufacture, buy, sell, deal in and deal with, both as principal and agent, rope, cordage, binder twine, nets, netting and all other similar articles of which flax, hemp, sisal, jute, wool, manila,

cotton, silk and other fibrous substances are parts component, or otherwise, and any article of a similar nature.

To carry on the business, both as principal and agent, of cotton spinners, flax, hemp, sisal, jute, wool, and manila spinners, linen manufacturers, flax, hemp, sisal, jute, wool, manila, cotton and silk merchants, yarn merchants, netting manufacturers, and to purchase, comb, prepare, spin, dye and deal in flax, hemp, sisal, jute, wool, manila, cotton and all other fibrous substances, and to weave or otherwise manufacture, buy, sell and deal in linen cloth, warps, and all other goods and fabrics, whether textile, frebled, netted or looped, necessary or convenient in carrying on said business.

To act as agents or representatives of manufacturers, producers or dealers in, as agents for buying and selling upon commission or otherwise, rope, cordage, twine, nets, netting and all other similar articles necessary or convenient in carrying on said business manufactured wholly or in part out of flax, hemp, sisal, jute, wool, manila, cotton, silk, and other fibrous substances or parts component.

To manufacture, produce, acquire, own, deal in and deal with all machinery, apparatus and contrivances or parts thereof, and any materials or articles of any nature or kind useful or necessary in connection with any or all of the objects hereinbefore expressed or of a character similar or analogous thereto.

To acquire the property and assets of all kinds and to undertake the liabilities of any person, firm, association or corporation, of the same general character as that for which this corporation is formed, either wholly or in part, and to pay for the same in the stock or bonds of this corporation or otherwise.

Form 209.

RUBBER.

The making, purchasing and selling of rubber boots and shoes and all goods of which rubber is a component part, and the various materials entering into the manufacture of any and all such goods, and also the acquiring and disposing of rights to make and use any and all such goods, and materials, and the doing and transacting all acts, business and things incident to or relating to or convenient in carrying out its business as aforesaid, which are authorized by law, including the purchasing the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business or of any other company whose

shares it may lawfully purchase and exercising with relation thereto all the rights, powers and privileges of individual owners of the shares of such stock.

Form 210.

SALT.

To manufacture, mine, and trade in salt and each and every product of salt, and all articles or products of which salt forms a component part, or may be in any way utilized into a condition, combination, connection, article, substance or form whatsoever; and to purchase, sell, deal in and with, crush, refine and treat each, any or all of the articles, products or substances herein mentioned or referred to, and to make, purchase, sell and deal in manufactured articles made partly or wholly from the above mentioned articles, or any of them, or from any like or kindred products or other substances whatsoever.

Form 211.

SANITARY UTILIZATION.

The prosecution of the general business of the removal, disposition, destruction and utilization of garbage, and the city, street and house refuse, and the making of contracts with municipal corporations or others for such purpose.

The treatment of garbage and waste matters and their conversion into useful or innocuous substances, and the application of the apparatus and processes employed therein to the manufacture of products from other materials.

Form 212.

SAWMILLS.

To carry on business as timber merchants, sawmill proprietors, and timber growers, and to buy, sell, grow, prepare for market, manipulate, import, export, and deal in timber and wood of all kinds, and to manufacture and deal in articles of all kinds in the manufacture of which timber or wood is used, and to carry on business as ship owners, and, so far as may be deemed expedient, the business of general merchants, and to buy, clear, plant, and work timber estates, and to carry on any other businesses which may seem to the company capable of being conveniently carried on in

connection with any of the above, or calculated directly or indirectly to render profitable or enhance the value of the company's property or rights for the time being.

Form 213.

SCHOOLS.

To maintain and operate a school or schools in which students may obtain a classical, mathematical, scientific, technical or general education.

To provide for the delivery and holding of lectures, exhibitions, public meetings, classes and conferences, calculated directly or indirectly to advance the cause of education.

To establish and maintain a library, and also reading and writing rooms with a reference library, and to furnish the same with books, reviews, magazines, newspapers and other publications.

Form 214.

SECURITIES.

(Public Securities Company.)

To acquire by purchase, subscription or otherwise and to own, hold, sell and otherwise dispose of, exchange, deal in and deal with stocks, bonds, debentures, obligations, evidences of indebtedness, and securities issued by any public or private corporation, government or municipality, or otherwise, and to issue in exchange for all such shares, stocks, bonds, debentures or other evidences of indebtedness or obligations, the stocks, bonds, debentures or other evidences of indebtedness of the corporation; and the corporation shall have express power to hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock, bonds, debentures or other evidences of indebtedness or obligations created by any other corporation so acquired and to exercise all of the powers of a stockholder in any such other corporation.

To acquire by purchase or otherwise the good will, business, property rights, franchises and assets of every kind and undertake either wholly or in part the liabilities of any person, firm, association or corporation and to take up any business as a going concern or otherwise (a) by purchase of the assets thereof wholly or in part; (b) by acquisition of the capital stock or any part thereof, or (c) in any other manner and to pay for the same in cash, the stock or bonds of this corporation or otherwise; to hold, maintain

and operate or in any manner dispose of the whole or any part of the good will, business, rights and property so acquired; and to conduct in any lawful manner the whole or any part of any business so acquired and to exercise all the powers necessary or convenient in and about the management of such business.

To carry on and undertake any business undertaking, transaction or operation commonly carried on or undertaken by capitalists, underwriters, promoters, financiers, contractors, merchants, commission men and agents and in the course of such business to draw, accept, acquire and sell all or any negotiable or transferable instruments and securities, including debentures, bonds and notes.

To purchase and otherwise acquire, sell and otherwise dispose of, deal in and deal with real and personal property of all kinds, including business concerns and undertakings.

To purchase, take, acquire, lease, hold, own, maintain, work, develop, sell, convey, mortgage, exchange and improve or otherwise deal in and deal with real estate or any interest and rights therein and water rights, and to erect, construct, alter, maintain and improve lands, buildings or works of any description on any lands or appurtenant to any water rights so purchased or otherwise acquired or upon any other lands, and to repair, alter and improve existing houses, warehouses or works thereon and appurtenant, necessary or convenient thereto.

Form 215.

SEWING MACHINES.

To carry on the business of manufacturing in the State of New Jersey, and more particularly to manufacture, use, operate and sell dash and fender sewing machines and other special machines and appliances, tools, goods and products, and to own, hold and control, and in the course and for the purposes of such business, and in using and distributing the products, and securing the advantages of the same, and in doing all things which may be done under or pursuant to this certificate of incorporation, to own, lease, control, construct and equip buildings and property, real, personal and mixed, and to sell, demise, lease or otherwise grant such portions of the same as it may not desire to retain; to own, lease, possess and use offices, office furniture, tools, implements and other personal property of every name, nature and description; to apply for, obtain, register, purchase, lease and otherwise acquire, and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of, any and all trade-marks, formulæ, secret processes, trade names or distinctive marks, and all inventions, improvements and

processes used in connection with or secured under letters patent, of the United States, or of any other country, or countries, or otherwise, and to use, exercise, develop, grant licenses in respect of or otherwise take into account, any or all such trade-marks, patents, licenses, concessions, processes, inventions and the like, or any such property, rights or information so acquired; to manufacture and sell articles which may advantageously be made or sold in connection with such business; to own, control, sell and deal in stocks and bonds of corporations, domestic or foreign, including the right to vote thereon, and to issue in exchange therefor its stock, bonds or other obligations; to borrow money, and for the purpose of securing the payment of sums borrowed, to mortgage, sell, transfer or pledge any real or personal property, including its franchise, and in general to do and perform any and all acts and negotiate and carry out any and all contracts and agreements which may be conducive to the sale, disposition, use, introduction or value of the manufacturers or products of said company, or any rights, processes or property of any name or nature owned, held or controlled by it, including the making and execution of contracts, which may be deemed by the directors or officers necessary, convenient or advantageous thereunder, thereto or in connection therewith; the corporation shall have power to conduct its business in all its branches, and have one or more offices outside of the State of New Jersey, and may keep at said offices, or any thereof, its books, papers and accounts, other than its stock and transfer book, and for the purpose of its business unlimitedly to purchase, acquire, hold, mortgage and convey real and personal property in the State of New Jersey, as well as in all the other states and foreign countries.

Form 216.

SHIPBUILDING.

To build, manufacture, repair, operate and maintain ships, boats and vessels of all kinds, and their furnishings and appurtenances, together with all materials, articles, tools, machinery and appliances entering into or suitable and convenient for the construction or equipment thereof; to buy, sell, lease, or otherwise deal in and with and dispose of the same, and to carry on any trade or business incident thereto or connected therewith; to build, manufacture, repair, buy, sell, lease or otherwise deal in and dispose of windlasses, capstans, engines, boilers, machinery, tackle, apparel and furniture of all kinds and descriptions; to manufacture any form of wood, iron, steel, copper and other metals and materials; to engage in manufacturing of all kinds and mining of all kinds;

to apply for, purchase or otherwise acquire, hold, own, use, operate, sell, assign, grant and take or give licenses in respect of any and all trade marks, trade names, inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise; to take, acquire, purchase, hold, own, rent, lease, sell, exchange, mortgage, improve, cultivate, develop and otherwise deal in and dispose of any and all property, real and personal, of every description incident to or capable of being used in connection with the aforesaid businesses or any of them.

To transport goods, merchandise and passengers upon land or water; to engage in building, repairing and designing houses, structures, vessels, ships, boats, wharves, docks, dry docks, railroads, engines, cars, machinery and all other equipment; and to construct, maintain and operate railroads (other than railroads within the State of New Jersey).

To build, construct, repair, maintain and operate water, gas or electrical works, tunnels, bridges, viaducts, waterways, wharves and piers; to own, operate and maintain steamship lines, vessel lines or other lines for water transportation.

To acquire by purchase, subscription or otherwise, and to hold and dispose of stocks, bonds or any other obligation of any corporation formed for, or then or theretofore engaged in or pursuing any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation; to hold for investment, or otherwise to use, sell or dispose of any stock, bonds or other obligations of any other corporation; and to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the company; and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stock, bonds or other obligations, or to do any acts or things designated for any such purpose; and while owner of any stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

Form 217.

SHIPPING.

To construct, hire, purchase and operate steamships and other vessels of any class, and to establish and maintain lines or regular services of steamships or other vessels, and generally to carry on

the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods and merchandise by any means, either by its own vessels, railways and conveyances, or by or over the vessels, conveyances and railways of others; to construct, purchase, take on lease, or otherwise acquire and work any railway, wharf, pier, dock, buildings or works capable of being advantageously used in connection with the business of the company as a shipping company; in connection with any of the objects aforesaid to carry on the business of a railway company, railway contractors, shipbuilders, engineers, manufacturers of machinery and car builders; to acquire concessions or licenses for the establishment and working of lines of steamships or sailing vessels between any ports of the world, or for the formation or working of any railway, wharf, pier, dock, or other works, or for the working of any public conveyances.

Form 218.

SHIPPING.

To carry on the business of engaging, receiving, transporting and delivering merchandise upon freight, or for hire, between any port or ports in the United States and any foreign port or ports, or between any port of the United States, and any other port or ports of the United States, or between any foreign port or ports, and any port or ports of the United States (any of said voyages to be made direct or via port or ports); the business of chartering vessels therefor; the business of operating vessels in such service; the business of acting as agents for vessels employed in such service; the business of contracting or arranging for the transportation of cargo to or from any of such ports by rail or boat, or otherwise, from or to any inland or coastwise place or places; the business of contracting with others, and employing necessary labor and purchasing necessary material for the performance and accomplishment of the said objects or any of them.

Form 219.

SHIRTS, COLLARS AND CUFFS.

To manufacture, buy, sell, import, export, trade and deal in shirts, waists, collars and cuffs, ties, cravats, scarfs and neckwear generally, and all kinds of wearing apparel for both sexes, and any and all fabrics and materials adapted for such purposes.

Form 220.

SHOE MANUFACTURERS.

(Consolidated Shoe Manufacturers' Company.)

To carry on the business of boot and shoe makers and dealers, and to manufacture, buy, sell and deal in boots, shoes, leather, and leather goods of all kinds, blacking, varnish, and other preparations for boots or leather, lasts, boot stretchers, boot jacks, button hooks, laces, fastenings, buckles, and all other accessories, including all kinds of leather and rubber products and by-products.

To own, lease, operate and maintain shoe factories, rubber factories, tanneries, distributing stores and any and all kindred places of business.

To carry on a general jobbing trade in leather, rubber and all kindred products.

To deal in hides, leather, rubber and rubber goods of all kinds and description.

To do any and all things lawful in manufacture, trade and commerce.

Form 221.

SILK.

To buy, sell, manufacture, work, prepare, treat and in all ways handle and deal in silk, wool, and other textile fabrics of all kinds, and the cotton, linen, silk, wool and other threads and raw materials entering into the composition of textile fabrics of all kinds.

To manufacture, buy, sell, and in all ways handle and deal in gloves and other articles of use, wear or ornament, into the manufacture of which silk or other fabrics enter in whole or in part.

To provide, own, maintain, sell, lease, mortgage, convey, improve and in all ways use and operate factories, buildings, machinery, equipments, works and facilities generally for the manufacturing, selling, working, preparing, treating, handling, and dealing in silk and other textile fabrics, the threads, parts and raw material thereof, and the articles whether of use, wear or ornament into the production of which such silk or other textile fabrics, threads or other raw material enter in whole or in part.

Form 222.

SLAUGHTERING CATTLE.

To carry on the business of slaughtering cattle, calves, pigs, sheep, lambs and other animals for food purposes and dealing in and

contracting for the purchase and sale of all kinds of products, hides, oil, fat, offal, horn, glue, fertilizers and other by-products arising out of the slaughtering of animals for food purposes or in connection therewith, and to manufacture, buy, sell, exchange and deal in the above specified products and in all materials used in the manufacture of food products, fertilizers, or in any of the matters aforesaid.

To carry on as principals, agents, commission merchants or consignees, the business of buying and selling all kinds of live stock, and the business of manufacturing oils, fats, tallow, fertilizers, glue, bone business, and dealing in hides, fats, offal, horn and any of the materials used in the manufacture of the products therefrom, and to carry on as such principals, agents, commission merchants or consignees any other business which may be conveniently conducted in conjunction with any of the matters aforesaid.

Form 223.

SMELTING.

To acquire, by purchase or otherwise, and to build, own, control, operate and maintain mills and works for the crushing, sampling and treating of mineral-bearing ores, and for the smelting, reduction and extraction of all kinds of mineral-bearing ores; and to buy, sell, assay, hold, store, ship and deal in such ores and their products on its own account and as factor or agent for others; to acquire, own and use water and water rights incident to said mills and works; to acquire, by purchase or otherwise, and to hold, improve and sell, or otherwise dispose of mines, mill sites and other real property.

Form 224.

SOAP.

To purchase, produce, manufacture, sell and deal in perfumery oils, fats and scouring products, and in all materials and compounds which shall partake of the properties of soap, or be similar thereto or have like uses.

Form 225.

SPIRITS—DISTILLING.

To manufacture, buy, sell, deal in, distribute, store, warehouse, import and export, grain, molasses and all articles used in

connection with the operation of a distillery, and to manufacture, buy, sell, deal in, distribute, store, warehouse, import and export, all products and by-products of such articles.

To do a general warehouse and storage business.

To do a general cooperage business.

To buy, sell, deal in, issue, transfer, register, certify and guarantee warehouse receipts.

To buy, sell, deal in and feed cattle.

To carry, transport, ship and forward and cause to be carried, transported, shipped and forwarded, any of the property above referred to.

To organize or cause to be organized under the laws of the State of New Jersey, or of any other state, territory or country, a corporation or corporations for the purpose of accomplishing in the State of New Jersey and elsewhere in any part of the world, any of the objects for which this corporation is organized; to subscribe or cause to be subscribed for, and to purchase and otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, distribute and otherwise dispose of the whole or any part of the shares of the capital stock, bonds, coupons, mortgages, deeds of trust, debentures, securities, obligations, evidences of indebtedness and property of such other corporation or corporations.

To subscribe or cause to be subscribed for, and to purchase and otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, distribute and otherwise dispose of the whole or any part of the shares of the capital stock, bonds, coupons, mortgages, deeds of trust, debentures, securities, obligations, evidences of indebtedness, notes, good will, rights, assets and property of any and every kind or any part thereof of any other corporation or corporations, association or associations, now or hereafter existing and whether created by the laws of the State of New Jersey, or of any other state, territory or country, and to operate, manage and control such properties or any of them, either in the name of such other corporation or corporations or in the name of this corporation, and while owners of any of said shares of capital stock to exercise all the rights, powers and privileges of ownership of every kind and description, including the right to vote thereon, with power to designate some person for that purpose from time to time to the same extent as natural persons might or could do.

To endorse, guarantee and secure the payment and satisfaction of the bonds, coupons, mortgages, deeds of trust, debentures, securities, obligations, evidences of indebtedness and shares of the capital stock of other corporations, and also to guarantee and secure the payment or satisfaction of dividends on shares of the capital stock of other corporations.

To dissolve, wind up, liquidate, merge or consolidate any or all of such other corporations.

(For similar form, see Form No. 90, Distillers, page 413, ante.)

Form 226.

STANDARD OIL COMPANY.

To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease and improve lands; build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipe lines; to erect and operate telegraph and telephone lines and lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to acquire, use, sell and grant licenses under patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to exercise all the privileges of ownership, including voting upon the stocks so held; to carry on its business and have offices and agencies therefor in all parts of the world; and to hold, purchase, mortgage and convey real estate and personal property outside of the State of New Jersey.

Form 227.

STATIONERS, ETC.

To carry on the businesses of stationers, printers, lithographers, electrotypers, engravers, die sinkers, envelope manufacturers, bookbinders, book manufacturers; to carry on the business of book-sellers, publishers and dealers in the materials used in the manufacture of paper, and dealers in or manufacturers of any other articles or things of a character similar or analogous to the foregoing, or any of them, or connected therewith.

Form 228.

STEAMSHIP.

Building, buying and selling, equipping, operating and owning steamships, steamboats, sailing ships, boats and other property to be used in such business, trade, commerce, and navigation, purchasing and selling, owning and holding, mortgaging and leasing all kinds of vessels and boats, their apparel and tackle, wharfs,

water rights, piers and lands in New Jersey and in the other states of the United States, and in such other places as the business of such steamship company may seem to require, or as may be necessary or convenient for the business of the company.

(See charter of the International Mercantile Marine Company, p. 366, ante.)

Form 229.

STEAMSHIP (SINGLE).

To purchase or otherwise acquire the steamship “ ”
 [or a steamship now in course of construction at and
 intended to be called “ ”], together with all requisite
 equipment for the same.

In the event of the loss or sale of the said vessel or any substituted vessel, to build, purchase, contract for, or otherwise acquire from time to time one or more other vessels or shares therein, but so that the company shall not work, trade with, or carry on the business of a ship owner with more than one vessel at one time, and in any such case the objects herein mentioned shall apply to any vessel from time to time so purchased or acquired.

• To charter, hire, equip, loan on commission, or otherwise use, repair, let out on hire, and trade with the said vessel or substituted vessel.

To purchase goods, produce, cattle and other live stock, and any other merchandise whatsoever, for the purpose of freighting the said vessel or substituted vessel, and to dispose of the same by sale or otherwise.

To carry on the business of a ship owner in all its branches with respect to the said vessel or substituted vessel only.

To employ as ship's husband and managing agent of and for the said vessel or substituted vessel, any person, firm, or company, and that, although he or they may not be entitled to any share or interest in the vessel in question, or in the company.

To subscribe to any association, institution, or company calculated to benefit the company, or persons employed by the company, or persons having dealings with the company.

Form 230.

STEEL FOUNDRIES.

To manufacture iron, steel, manganese, coke, copper, lumber and other materials, and all or any articles consisting, or partly

consisting, of iron, steel, copper, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron, manganese, stone or other minerals or oil, and any woodlands or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, water works, gas works and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation, and to sell the same, or otherwise to dispose thereof, or to maintain and operate the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey.

Form 231.

STOCK EXCHANGE.

(New Jersey Stock Exchange.)

To provide, regulate and maintain an Exchange and to furnish facilities to its members for the purchase, sale and delivery of stocks, bonds, securities and other personal property; to promote and facilitate the business of buying, selling, dealing with and dealing in securities, and to create among the members facilities with which such or similar business may be conducted; to establish just and equitable principles in the business carried on by and between its members; to maintain uniformity in rules, regulations and usages of the business; to effect standards of classification in said business; to acquire, preserve and disseminate useful information connected with the business.

To perform the office of, or to procure any other corporation or association to perform the office of clearing transactions in any securities, stocks or other property dealt in by members of the Exchange, subject always to the rules and regulations adopted from time to time by the directors.

To acquire by purchase or otherwise, and to hold, own, deal in and deal with stocks, bonds, debentures, obligations, evidences of indebtedness and securities issued by any corporation, person,

firm, association or authority, local, municipal or otherwise, and to exercise and enforce all rights and powers conferred by or incident to the ownership or possession thereof, including the right to vote thereon.

Form 232.

STREET RAILWAY.

(To Be Operated Out of New Jersey.)

To engage in and carry on the business of manufacturing street railway cars, railroad cars, automobiles, omnibuses, and all other vehicles for the transportation or conveyance of passengers, freight, mail or express, and of manufacturing car trucks, car wheels, equipment and rolling stock; and of purchasing and otherwise acquiring, constructing, equipping, leasing, maintaining and operating, by electricity or other power, street railways for the transportation of passengers, mail, express, merchandise or other freight, in any state or territory of the United States, or in any foreign country (except that the corporation shall not operate a railroad within the State of New Jersey); and of manufacturing, generating, storing, using, selling and leasing electricity for power, light or heat, or other purposes, and for the purpose of acquiring the real and personal property, rights, privileges, ordinances and franchises of any street railway companies, and of electric power, light or heat companies, foreign or domestic, now or hereafter existing, or of leasing the same, or acquiring and holding the shares, bonds or other securities of such railway or electric power, light or heat companies, or any interest therein; buying, selling and otherwise trafficking and dealing in any of the same; leasing, buying or otherwise acquiring, operating, maintaining and letting, selling or otherwise disposing of lands, mills, manufactories, plants, businesses, good will, patents, patent rights, and all rights and privileges in connection therewith, and other property and appurtenances pertaining to said business; acquiring, operating and maintaining, and disposing of storage, transportation and all other facilities and conveniences whatsoever and wheresoever in connection with any of the purposes herein referred to; acting as financial, commercial and general agent for any and all other corporations and individuals whomsoever and wheresoever, in the conduct of its or their business.

Form 233.

SUGAR.

The purchase, manufacture, refining and sale of sugar, molasses and melada, and all lawful business incidental thereto.

Form 234.

SUGAR.

To acquire by purchase, lease, exchange or otherwise, plantations, lands or any interest therein, machinery, tools and instruments, either in the United States or without the United States; to acquire, construct and operate sugar or other plantations; sugar or other refineries, buildings, mills, factories, distilleries, paper mills, oil wells and other works; to plant, cultivate and deal in sugar cane, maize, tobacco or other crops; to purchase, sell, raise and deal in live stock; to buy, acquire, build, possess, rent or sell dwelling houses; to own, lease or otherwise acquire stores, and to do a general merchandise business.

To carry on the business of manufacturing, producing, refining, adapting, preparing, buying, selling and dealing in, and shipping and transporting sugar-cane, sugar, molasses, syrups, melada and all the products thereof.

To operate refineries, distilleries, paper mills, oil wells and plantations; to receive, forward and transport all classes of freight by land or water; to carry on in the Island of Cuba or out of it business in agriculture, mining operations and manufactures of all kinds.

To construct or acquire and operate steamships, steamboats and sailing vessels, docks or wharves convenient or necessary to the business of the company.

To acquire or construct railroads (other than railroads within the State of New Jersey) and to operate the same.

To purchase, receive, own and sell bonds, mortgages, debentures, notes, shares of capital stock and other securities, contracts or evidences of indebtedness of any other corporation, and, while the owner and holder thereof, to exercise, in respect thereto, any and all the rights, powers and privileges of individual owners thereof.

To carry on the business of warehousing and all business necessary and impliedly incidental thereto.

To issue certificates, negotiable or otherwise, to persons warehousing goods with the company; to act as general warehousemen. to make advances or loans upon the security of such goods or otherwise; to enter into and perform contracts of every sort and kind, with any person, firm, association or corporation; to manage the affairs or take over and carry on the business of any other company, either by acquiring shares of stock and other securities thereof or otherwise; to exercise all and any of the powers of owners or holders of shares of stock or securities thereof; to receive and distribute as profits the dividends and interest of such shares of stock or securities.

Form 235.

SUGAR REFINERY.

The planting, cultivating, growing, producing, buying, importing, manufacturing, selling, exporting and dealing in sugar and coffee in all their forms, and food products generally, and the carrying on of any business, collateral or incidental thereto, and also the acquiring, holding, purchasing, mortgaging, leasing, conveying and disposing of real and personal property, both tangible and intangible, and licenses, rights and patents, as well within the State of New Jersey as out of said state; the giving of notes, bonds, obligations, pledges, securities, mortgages and contracts; the receiving, holding, owning and selling of the bonds and obligations of other corporations and persons; and the holding, owning, voting upon, transferring, hypothecating and selling of the shares of other corporations, domestic and foreign. The business of the corporation in all its branches is to be conducted not only in the State of New Jersey, but also in any of the states east of the Mississippi River and such other states and territories of the United States as the board of directors may determine; and may also, if they so decide, be conducted in foreign countries. Any or all of the powers in this certificate enumerated, and any other powers which the corporation shall possess, may, so far as permitted by law, be exercised by the board of directors without action by the stockholders. No concurrence by the stockholders shall be necessary in the purchase, lease, mortgage, sale or other disposition of any real or personal property wheresoever situate.

Form 236.

TANNERIES.

To own, operate and carry on one or more tanneries; to buy and sell hides and skins; to tan and finish leather of all classes and kinds; to buy and sell leather; to buy and sell scrap leather and the by-products of tanning; to erect tenement houses and to rent or sell the same to employees or others; to lease, buy and sell lands and timber required for its business operations and to do all work connected with the aforesaid businesses.

Form 237.

TELEGRAPH AND TELEPHONE.

(To do business without the State of New Jersey.)

To construct, maintain and operate lines of electric telegraph and telephone in any state, territory or country, except in the State of New Jersey, and to own any interest in such lines or any grants therefor.

Form 238.

TELEGRAPH AND TELEPHONE CONSTRUCTION COMPANY.

(To do business without the State of New Jersey.)

To acquire by purchase, or to construct and otherwise deal with telegraphs, telephones and all other electrical or other contrivances for transmitting messages by signal, works, buildings, conveniences; to acquire by purchase or otherwise any lands, or interest therein; to acquire, carry on and deal with the undertakings, lands, property, and businesses of telegraph or telephone companies and of companies and persons engaged in manufacturing, constructing and laying down telegraph or telephone lines, instruments, machinery, wire and other materials and things used with or appertaining to telegraphs and telephones.

[A telegraph or telephone corporation cannot be organized under the General Corporation Act to do business in New Jersey. (See Section 6, p. 28, ante.) The organization of a telegraph or telephone company to do business out of the state is permitted, but in those states where the rule is that a foreign corporation cannot obtain a franchise of a public nature the practical operations of such companies would probably be limited to constructing lines, or operating them through a local company having a properly granted franchise.]

Form 239.

THEATRE AND MUSIC HALL.

To carry on the business of theatrical proprietors, music hall proprietors, caterers for public entertainments, concerts, and public exhibitions, ballets, conjuring, juggling, and other variety entertainments, and to provide, engage, and employ actors, dancers, singers, variety performers, athletes, and theatrical and musical artists, and to produce and present to the public all sorts of shows, exhibitions, and amusements which are or may be produced at a theatre or music hall.

To carry on the business of restaurant keepers, and vendors of wines, spirits and tobacco, mineral waters, and provisions, and of refreshment contractors generally.

To acquire copyrights, rights of representation, licenses and privileges of any sort likely to be conducive to the objects of the company, and to employ persons to write, compose, or invent plays, songs, interludes, prologues, epilogues, poetry, music and dances, and to remunerate such persons, and to print or publish, or cause to be printed or published, any play, poem, song or words, of which the company may have the copyright or the right to publish; and to sell, distribute and deal with any matter so printed as the company may think fit; and to grant licenses or rights in respect of any property of the company to any other person, firm or company.

Form 240.

THEATRICAL.

To purchase, own, produce, and present, and to license others to produce and present, theatrical plays and operas and to acquire and hold, sell, assign and transfer, copyrighted and uncopyrighted plays and operas.

Form 241.

THREAD.

To manufacture cotton, linen, silk, wool and other threads, cloths, fabrics, and other manufactures, articles and goods composed in whole or in part of cotton, flax, hemp, silk, wool or other material; to buy, grow, prepare and sell the stock and raw material for said manufacture and to purchase or manufacture blocks, spools, bobbins, boxes, tickets, labels, wrappers, show cards, machines, tools, and other appliances, articles or products whatsoever required in, and connected with, the said businesses, and the trading in, dealing in, selling and disposing of the articles purchased or manufactured by the company.

Form 242.

TOILET ARTICLES.

To carry on the business of manufacturers of and dealers in and with toilet articles and requisites, and of chemists, druggists and pharmacists, manufacturers, importers, exporters, manufacturers of

and dealers in chemicals, pharmaceutical, medicinal and other preparations, and of fluid extracts, perfumes, soaps, patent medicines and other proprietary articles.

To buy, sell, manufacture, refine, manipulate, export and import, deal in and deal with all ingredients, substances, apparatus, appliances, machinery and things capable of being used in connection with any such business as aforesaid, either by wholesale or retail, and to purchase, lease or otherwise acquire, and to hold, own and use real estate and all interest and rights therein without limit as to amount in any part of the world, but always subject to local laws, and to construct, maintain and alter any buildings, works or improvements necessary or convenient for the purposes of the company.

Form 243.

TOBACCO COMPANY.

To cure leaf tobacco, and to buy, manufacture and sell tobacco in any and all its forms, and to erect or otherwise acquire factories and buildings; to establish, maintain and operate factories, warehouses, agencies and depots for the storing, preparation, cure and manufacture of tobacco, and for its sale and distribution, and to transport or cause the same to be transported as an article of commerce, and to do any and all things incidental to the business of trading and manufacturing aforesaid.

Form 244.

TOBACCO.

To plant, grow, cultivate, cure and treat, and buy, sell and deal in, leaf tobacco, and to buy, manufacture and sell cigars, cheroots, little cigars, cigarettes and all other forms of tobacco, and to buy, manufacture, sell, lease, let and hire machines and machinery, tools, implements, appliances and all other property useful or available in the cultivation, cure or treatment of leaf tobacco or the manufacture of cigars, cheroots, little cigars, cigarettes or any other form of tobacco; to erect or otherwise acquire factories and buildings, establish, maintain and operate factories, warehouses, agencies and depots for the curing, storing, preparation and manufacture of tobacco, cigars, cheroots, little cigars, cigarettes, supplies, machinery, implements and appliances, and for their sale and distribution, and to do any and all things incidental to the business aforesaid or any of it.

Form 245.

TOWING AND TRANSPORTATION.

To build, construct, fit, equip, furnish, own, purchase, charter, use, operate and navigate boats, barges and vessels, of all classes and descriptions, propelled by sail, steam, electricity or other power, and to use and operate the same in lawful business, trade, commerce or navigation upon the ocean, or upon any seas, estuaries, sounds, gulfs, harbors, bays, lakes, rivers, canals, creeks or other waterways, and to furnish facilities for towing, lighterage and transportation upon such waters.

To furnish and supply facilities for and to engage in the business of carriage, transportation, storage and lading of freight, goods, wares and merchandise, mails, property or passengers upon such waters or waterways.

To construct buildings, bridges, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, machine shops, electrical works, viaducts, aqueducts, canals, and any other means of transportation, and to sell the same or otherwise dispose thereof or to maintain and operate the same.

To construct, lease, own, or sell transportation line or lines by land or water in any state or country, subject to the laws of such state or country, either directly or through ownership of stock of any corporation, and permit, construct, provide, acquire, carry out, maintain, improve, manage, develop, control, take on lease or agreement, sell, lease, let, license to use, work and dispose of the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey, as aforesaid.

To engage in, permit, conduct and carry on the business of ship chandlers in all its branches and to furnish and supply any and all articles necessary, useful or desirable in the navigation of ships, steamboats and other vessels and provide supplies therefor.

Form 246.

TRACTION AND LIGHTING.

To purchase or otherwise acquire, construct, equip, lease, maintain and operate, by electricity or other power, street railways for the transportation of passengers, mail, express, merchandise or other freight, in any state or territory of the United States, or in any foreign country (except that the corporation shall not operate a railroad within the State of New Jersey); and also in said cities and territories, to purchase or otherwise acquire, construct, equip, lease, maintain and operate, plants for the generation, distribution and

sale of gas and electricity for illuminating, heat, power and all other uses, and plants for the supply of water and for the generation of power by water, and plants for the generation and distribution of steam for power, heating and all other lawful purposes, and to purchase and otherwise acquire, take, hold and operate real and personal property, rights, privileges, ordinances and franchises of any street railway companies, and of electric light, power or heat companies, gas, water, water power or steam heating companies, foreign or domestic, now or hereafter existing or of leasing the same; provided, however, that the corporation shall not engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

Form 247.

TRANSPORTATION (LOCAL).

To manufacture or otherwise acquire, deal in, use, repair, maintain, store, operate, run, lease, let out and otherwise employ or dispose of cars, coaches, carriages, cabs, conveyances, omnibuses, wagons, trucks and all other vehicles, and movable equipment propelled by horse or any other power, and designed for the carriage of persons, or of freight, or for any other use; and also to manufacture or otherwise acquire and deal in, use, sell, and otherwise dispose of all materials, supplies, products, machines, tools, implements, contrivances and devices useful in, or in connection with, any of the business aforesaid.

Form 248.

TRUCKING.

To carry on a general trucking, contracting and stevedore business, and to that end, to manufacture, acquire, deal in, advertise and dispose of trucks, carriages and other vehicles and kindred appliances, and to trade and deal in draft animals and apparatus and other things properly appertaining and belonging to said business.

Form 249.

TYPESETTING MACHINES.

The purchase, manufacture, sale and letting of machinery and all other materials and objects used in the art of printing and all im-

provements thereon and substitutes therefor, and all materials used in manufacturing the same; and also the acquiring and disposing of rights to manufacture, use, sell or otherwise dispose of such machines and materials, and the transacting of all other kinds of business incidental thereto or which may be profitably carried on in connection therewith.

Form 250.

TYPEWRITING MACHINES.

To carry on the business of manufacturing, buying, leasing, renting, selling, operating and distributing writing machines, typewriters, typewriter materials, appliances and inventions, and all other materials and articles connected with, or in anywise relating to the manufacture, sale or use of writing machines and typewriters; to establish and maintain manufactories, agencies and depots for the manufacture, purchase, sale, exchange, delivery and distribution of writing machines, typewriters and typewriter appliances and supplies, to purchase, receive, hold, assign, license to use, or otherwise dispose of, any patents for inventions, discoveries or rights therein, owned, operated, used or employed in the business of manufacturing, buying, selling or using writing machines, typewriters or typewriter supplies.

Form 251.

UNDERTAKERS.

The purpose for which said corporation is to be formed is the transaction of a general undertaking, burial and funeral furnishing business; to act as embalmers, funeral directors, liverymen, owners of or agents for crematories, mortuary chapels, etc.

Form 252.

WAREHOUSE.

To carry on the business of cold storage and warehousing and all the business necessarily or impliedly incidental thereto; and to further carry on the business of general warehousing in all its several branches; to construct, hire, purchase, operate and maintain all or any conveyances for the transportation in cold storage or otherwise by land or by water of any and all products, goods or manufactured articles; to issue certificates and warrants, negotiable or

otherwise, to persons warehousing goods with the company, and to make advances or loans upon the security of such goods or otherwise; to manufacture, sell and trade in all goods usually dealt in by warehousemen; to construct, purchase, take on lease or otherwise acquire any wharf, pier, dock or works, capable of being advantageously used in connection with the shipping and carrying or other business of the company; and generally to carry on and undertake any business undertaking, transaction or operation commonly carried on or undertaken by warehousemen, and any other business which may from time to time seem to the directors capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of or render profitable any of the company's properties or rights.

Form 253.

WATER POWER.

To purchase, acquire, hold, lease, manage, control and operate, and to sell, lease and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions as to this corporation may seem proper, water, water rights, power privileges and appropriations, for mining, milling, agricultural, domestic and other uses and purposes; and to develop, control, generally deal in and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions as to this corporation may seem proper, electrical and other power, for the generation, distribution and supply of electricity for light, heat and power, and for any other uses and purposes to which the same are adapted.

Form 254.

WATER-WORKS.

(Operations to be carried on out of New Jersey.)

To acquire, construct, own, enlarge, maintain and operate water-works and to supply municipalities, corporations and individuals with water and water power, and to acquire, erect, maintain, construct and enlarge all necessary dams, buildings, plant, machinery, fixtures and apparatus of every sort for supplying municipalities, corporations and individuals with water and water power for all purposes and to carry on the business incidental thereto, including the purpose of acquiring, constructing, enlarging, maintaining and operating water-

works, pumping stations and a system of water supply and the dams, reservoirs, pumping stations and conduits thereto appertaining in and _____ counties and elsewhere in the State of _____ and supplying the City of _____, in said State of _____, and the territory adjacent thereto and the citizens and inhabitants thereof and the corporations located and transacting business therein with water and water power for domestic, mechanical, public and fire and all other purposes, with power to acquire, hold, lease and convey real and personal estate suitable for the business of the corporation, and to acquire, own, hold, possess and convey franchises and grants from state or municipal authorities for supplying cities, villages and towns or either, and the inhabitants thereof with water for all purposes and the carrying on the business of operating water-works, and to acquire and to own stock and bonds of other corporations organized for like purposes, and to acquire, own, hold and possess all such other personal property as may be suitable or convenient for the business of the company, and with the right to issue bonds and secure the same by mortgage of the franchises, rights, contracts and property of the corporation, real and personal, and to issue common capital stock and to do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any of the objects hereinbefore enumerated, which shall at any time appear for the benefit of the corporation and in general to carry on any other business, whether manufacturing or otherwise, which may seem to the corporation capable of being conveniently carried on in connection with the above, or calculated to enhance the value of or render profitable any of the corporation's property or rights.

Form 255.

WHARF AND WAREHOUSE.

To acquire, hold, rent, lease, improve and convey lands and lands under water and riparian, dock and maritime rights, to construct docks, dry docks, wharves, piers, basins, derricks, elevators, warehouses, manufactories, stores, shops, tracks and other structures thereon, and to rent, lease and convey the same; to buy, sell, store, manufacture, import and export merchandise, machinery and products, and to build, own, repair and charter ships and vessels, afford them dockage, to commission, own, buy and sell such ships and vessels, and generally to carry on a land improvement, real estate, dock, shipping and merchandising business.

Form 256.**WIRE MANUFACTURERS.****(Brooklyn Wire Company.)**

To carry on the business of manufacturers of and dealers in wire and wire rope and any other kind of rope or cordage or wire and of all articles and things in which the use of wire or wire rope or cordage is or may be necessary or convenient, and to manufacture and trade and deal in and deal with any article required or used in any such business.

To manufacture iron, steel and all or any articles consisting, or partly consisting, of iron, steel, wood or other materials and all or any products thereof.

To construct, provide, acquire, maintain, improve, manage, develop, control, take on lease or agreement, sell, lease, let, work, use and dispose of any docks, mills, factories, warehouses, shops, buildings, dwellings for employees and others, and all other works and conveniences.

Form 257.**WOOLEN AND WORSTED.**

To carry on the trade or business of manufacturing, producing, adapting, preparing, buying and selling, and otherwise dealing in woolen and worsted goods, and other fabrics, and to manufacture, produce, purchase, adapt, prepare, use, sell or otherwise deal in any materials, articles or things required for, in connection with, or incidental to, the manufacture, use, purchase, sale of, or other dealing in woolen and worsted goods and other fabrics; and generally to carry on any other manufacturing business which can conveniently be carried on in conjunction with any of the matters aforesaid, or in or upon the premises of the company.

Form 258.**YARN MILL.**

To carry on the business of cotton doublers, weavers, flax, jute spinners, linen manufacturers, cotton, flax, hemp, jute and wool merchants, wool combers and worsted spinners, woolen spinners, yarn merchants, worsted makers, stuff and silk manufacturers, bleachers and dyers, and makers of vitriol, bleaching and dyeing material, and to purchase, comb, prepare, spin, dye and deal in flax, hemp, jute, wool, cotton, silk and other fibrous substances, and to weave or otherwise manufacture, buy and sell linen, cloth and other goods and fabrics whether textile, fiddled, netted or looped.

[See index to Specific Object Clauses, p. 380.]

Form 259.

ADDITIONAL SPECIFIC CLAUSES.

Additional precedents for specific object clauses will be found in the following certificates of incorporation on file in the office of the Secretary of State at Trenton, New Jersey.

Certified or uncertified copies may be obtained from the Secretary of State at nominal cost.

OBJECT.	NAME OF COMPANY.	DATE OF FILING.
Abattoir	Havana Abattoir Company.....	Nov. 27, 1895
Acetylene	Acetylene Gas Machine Imp. Co.....	Sept. 19, 1899
Alkali	American Alkali Company.....	May 4, 1899
Arms	McClean Arms Company.....	July 20, 1900
Bags	Consolidated Bag Company.....	Jan. 29, 1901
Baskets	American Basket Company.....	July 10, 1897
Booksellers	Consolidated Retail Booksellers.....	Jan. 13, 1900
Bottles	American Protective Bottle Co.....	Aug. 15, 1901
Brass	Atlantic Brass Company.....	May 10, 1899
Canal	Inter-Oceanic Canal Company.....	Apr. 3, 1900
Carbon	Consumers Carbon Company.....	Apr. 2, 1900
Carpet Cleaning.	American Pneumatic Carpet Cleaning Company	Dec. 14, 1900
Carriages	Columbus Buggy Company.....	Jan. 19, 1900
Casein	Casein Company of America.....	Mar. 3, 1900
Cash Register..	Hallwood Cash Register Company....	Apr. 18, 1900
Cash Register..	American Mechanical Cashier Co....	Dec. 28, 1901
Castings	American Casting Machine Co.....	Apr. 6, 1900
Chain	Standard Chain Company.....	Feb. 2, 1900
Cigars	American Cigar Company.....	Jan. 12, 1901
Clay	Mexican Clay Manufacturing Co....	Aug. 9, 1900
Clay	Atlantic Clay Company.....	June 21, 1899
Clock	Hartford Annual Wind Clock Co....	Nov. 26, 1901
Coke	East Jersey By-Product Coke Co....	Dec. 17, 1900
Coke	Patterson Coal & Coke Company.....	Oct. 10, 1900
Copper	White Knob Copper Co., Limited....	Apr. 25, 1900
Copper	Amalgamated Copper Company.....	Apr. 27, 1899
Cutlery	American Cutlery Company.....	Aug. 30, 1900
Elevators	Otis Elevator Company.....	Nov. 28, 1898
Emery	Ashland Emery & Corundum Co.....	Sept. 13, 1901
Felt	American Felt Company	Feb. 7, 1899
Fence	Page Woven Wire Fence Co.....	Dec. 11, 1901
Fertilizer	Chica Island Fertilizer Company....	Nov. 27, 1900
Fibre	American Consolidated Pine Fibre Co.	Oct. 16, 1900
Filter	N. Y. Filter Manufacturing Co.....	May 15, 1896
Fire Engine....	International Fire Engine Co.....	Dec. 14, 1899
Fireworks	Central Fireworks Company.....	June 8, 1896
Fur	New York Furring Company.....	Oct. 2, 1900
Furniture	American School Furniture Co.....	Mar. 13, 1899
Glucose	Corn Products Company.....	Feb. 24, 1902
Glue	Canadian Tanners Glue Company...	Feb. 7, 1901

OBJECT.	NAME OF COMPANY.	DATE OF FILING.
Graphite	Federal Graphite Company.....	Jan. 24, 1900
Graphite	International Acheson Graphite Co....	Mar. 15, 1900
Horseshoes	Saxton Horseshoe Manufacturing Co.	Aug. 18, 1900
Irrigation	Calaveras Ditch Company.....	Dec. 28, 1900
Kaolin	Consolidated Kaolin and White Hydraulic Cement Company.....	July 21, 1900
Library	Book Lovers Library.....	June 5, 1900
Live Stock	John P. Squire & Company.....	Feb. 20, 1901
Loom	American Loom Company.....	Feb. 20, 1900
Lunch Rooms...	Childs Dining Hall Co.....	May 15, 1900
Marble	American Marbles Company.....	Oct. 10, 1900
Manganese	New England Manganese Company..	Dec. 6, 1900
Mica	Alexandria Mica Mining Company...	June 21, 1898
Milk	Century Milk Company.....	Aug. 23, 1900
Mineral Water..	Ætna Lithia Water Company.....	Nov. 17, 1900
Oil Cloth.....	Standard Table Oil Cloth Co.....	July 12, 1901
Packers	Pacific Packing & Navigation Co....	July 20, 1901
Parquetry	American Parquetry Company.....	Mar. 16, 1899
Pastry	American Pastry and Mfg. Co.....	June 8, 1899
Phonographs ..	Consolidated Talking Machine Company of America.....	July 9, 1900
Plumbing	American Plumbing Sup. & Lead Co.	Apr. 22, 1899
Pottery	American Potteries Company.....	Dec. 15, 1898
Prisms	Daylight Prism Co. of America.....	Oct. 19, 1899
Pulp	Kenmore Pulp and Paper Co.....	June 26, 1900
Quicksilver	Empire Consolidated Quicksilver Mining Company	July 18, 1900
Refrigerator ...	Columbia Refrigerating Co.....	Mar. 10, 1899
Rope	Standard Rope and Twine Co.....	Nov. 8, 1896
Safes	Herring-Hall-Marvin Safe Co.....	Aug. 3, 1900
Saws	Douglas Saw Manufacturing Co.....	Nov. 22, 1895
Scales	Computing Scale Co. of America....	Oct. 23, 1901
Screws	Standard Screw Company.....	Mar. 27, 1900
Shovels	Ames Shovel and Tool Co.....	Aug. 17, 1901
Slate	Continental Slate Company.....	Apr. 15, 1901
Snuff	American Snuff Company.....	Mar. 12, 1900
Starch	United Starch Company.....	Aug. 28, 1899
Street Sweeper.	Miller Street Sweeper Co.....	Dec. 5, 1900
Stencil	Eclipse Stencil Machine Co.....	July 23, 1897
Stoves	American Stove Company.....	Dec. 24, 1901
Tacks	Atlas Tack Company.....	July 17, 1900
Talc	American Talc Company.....	Mar. 9, 1900
Tar	Union Coal Tar and Chemical Co....	Nov. 17, 1900
Tea	Grand Union Tea Company.....	Dec. 31, 1900
Time Recorder..	International Time Recording Co....	Apr. 9, 1900
Tools	Chicago Pneumatic Tool Co.....	Dec. 28, 1901
Turpentine	American Turpentine Company.....	May 24, 1901
Woolens	Imperial Woolen Company.....	Mar. 16, 1900
Zinc	American Zinc Extraction Co.....	Dec. 5, 1900
Zinc	Olympia Zinc Mining & Smelting Co.	Jan. 4, 1900

GENERAL CLAUSES.

[Note.]—After setting forth the specific objects for which the corporation is established, the modern practice in preparing certificates of incorporation is, first, to state a variety of additional objects, giving power to the corporation to carry on such other kinds of business, more or less closely related to the specific objects or purposes of the company as can be profitably carried on in conjunction therewith; and, secondly, to state in extenso the general powers of the corporation.

While it is undoubtedly true that the corporation would by implication possess many of such powers if not stated in the certificate, it is to be borne in mind that when a corporation goes into a foreign jurisdiction it takes its charter with it, and persons dealing with the company are chargeable with notice of all matters contained in the certificate of incorporation, whereas they might not be chargeable with knowledge of the general laws of a foreign state.

Another advantage is that the certificate of incorporation is used by business men as a practical guide, and they wish to see stated plainly and at length what they can do and what they cannot do. For instance, a lawyer knows that a New Jersey corporation has power to issue negotiable paper whether the certificate of incorporation contains a specific grant of such power or not; the business man, however, wants to see it so stated positively, and not left to implication.

Selections from the following forms may be advantageously made in many cases.

[See index to Specific Object Clauses, p. 380.]

Form 260.**To manufacture and sell:**

To manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise, and property of every class and description.

Form 261.**To purchase property:**

Generally to purchase, take on lease or in exchange, hire or otherwise acquire, any real and personal property, and any rights or privileges which the company may think necessary or convenient for the purposes of its business.

Form 262.

To purchase, hold, etc., real estate:

To the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, maintain, work, develop, sell, convey, mortgage, or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world, real estate and real property, and any interest and rights therein.

Form 263.

Patents—short form:

To deal with patents, acquire those taken out by others, acquire or grant licenses in respect to patents, or work, transfer, or do whatever else with them may be thought fit.

Form 264.

Patents and trade-marks:

To acquire, hold, use, sell, assign, lease, mortgage or otherwise dispose of letters patent of the United States or of any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes, trade-marks and trade names, or pending applications therefor, relating to or useful in connection with any business of the corporation.

Form 265.

Patents and trade-marks:

To acquire, use, give licenses under and dispose of, rights in respect to manufacture, use, business or trade, including inventions, processes, patents, trade-marks and trade names.

Form 266.

Patents:

To purchase or by any other means acquire, and protect, prolong and renew, whether in the United States or elsewhere, any patents,

patent rights, brevets d'invention, licenses, protections and concessions which may appear likely to be advantageous or useful to the company, and to use and turn to account and to manufacture under or grant licenses or privileges in respect of the same, and to expend money in experimenting upon and testing and in improving or seeking to improve any patents, inventions or rights which the company may acquire or propose to acquire.

Form 267.

Patents and trade-marks—fuller form:

To register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of, any and all trade-marks, trade names and distinctive marks, formulæ, secret processes, and all inventions, improvements and processes used in connection with or secured under letters patent and grants of the United States, or elsewhere, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any and all such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights, and information so acquired, and, with a view to the working and development of the same, to carry on any business, whether mining, manufacturing, or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

[A corporation cannot make an original application for a patent. Only natural persons can be inventors, and the Patent Laws do not authorize an application by any other person than the inventor or discoverer, or his legal representative. (See U. S. Revised Statutes, §4886, and Patent Office Rule No. 24.) The corporation may, however, take an assignment of a patent for which an application is pending.]

Form 268.

To acquire other businesses:

To acquire the good will, rights, property and assets of all kinds, and to undertake the whole or any part of the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock, bonds, debentures or other securities of this corporation, or otherwise,

Form 269.**To acquire business and property of any company, etc.:**

To acquire and carry on all or any part of the business or property of any company, copartnership or individuals engaged in a business similar to that authorized to be conducted by the company, and to undertake in conjunction therewith any liabilities of any person, firm, association or company possessed of property suitable for any of the purposes of this company, or for carrying on any business which this company is authorized to conduct, and as the consideration of the same to pay cash or to issue shares, stocks or obligations of this company at such valuation as the directors of the company, in their discretion, may determine.

Form 270.**To make contracts, etc.:**

To enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal, or body politic, and with the government of the United States, or any state, territory or colony thereof, or any foreign government.

Form 271.**To construct works, etc.:**

To purchase, lease, exchange, hire or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of its business; to erect and construct, make, improve, aid or subscribe toward the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employees and others, and works of all kinds; and in conjunction with and in furtherance of the general business and purposes of the corporation, as above described, to construct, lease, own, operate or sell transportation line or lines, in any state or country, subject to the laws of such state or country, either directly or through the ownership of stock of a corporation formed, or to be formed, for the purpose, under the laws of such state or country.

• [As to the law of New Jersey, with respect to the leasing of franchises of one corporation by another corporation, see §133, p. 250, ante.]

Form 272.**To construct works, etc.:**

To construct, execute, carry out, equip, improve, work, buy, sell, lease, develop, administer, manage, maintain or control public and private works and conveniences of all kinds, which expression herein includes railways operated outside of the State of New Jersey, by the use of steam, electric, horse or other power, tramways, docks, harbors, piers, ferries, wharves, bridges, canals, water-works, conduits, gas works, reservoirs, embankments, irrigations, reclamations, improvements, sewerage, drainage, sanitary, water, gas, electric light, telephone, telegraph and heat, light and power, supply works, and also hotels, warehouses, markets, private and public buildings, and all other works and conveniences or institutions of public or private utility or use.

Form 273.**To acquire stock, etc., of other companies:**

To hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by other corporation or corporations, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

[See §51, p. 163, ante.]

Form 274.**To acquire shares of stock, etc.:**

To purchase, subscribe for, or otherwise acquire, and to hold the shares, stocks or obligations of any company organized under the laws of this state or any other state, or of any territory or colony of the United States, or of any foreign country, and to sell, or exchange the same, and to exercise any or all of the powers of holders of shares, stocks or securities thereof, including the right to vote in respect thereof, such shares, stocks, or obligations or the proceeds thereof, among the stockholders of this company.

Form 275.**To control and manage other companies:**

To cause or allow the legal title, estate and interest in any property acquired, established, or carried on by the company to

remain or be vested, or registered in the name of, or carried on by any other company or companies, foreign or domestic, formed or to be formed, and either upon trust for or as agents or nominees of this company, or upon any other terms or conditions which the board of directors may consider for the benefit of this company. and to manage the affairs, or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks or securities thereof, and to receive and distribute as profits the dividends and interest on such shares, stocks or securities.

[See also charters of The Carnegie Company and United States Steel Corporation Forms, 12, 13.]

Form 276.

To enter partnership and make agreements for profit sharing:

To become a member of any partnership or a party to any lawful agreement for sharing profits, or to any union of interests, agreement for reciprocal concessions, joint adventure, or co-operation or mutual trade arrangement with any person or firm or company that is carrying on or engaged in, or about to carry on or engage in, any business which this corporation is authorized to carry on, or is engaged in, or that is conducting any business or transaction capable of being conducted so as directly or indirectly to benefit this corporation, and to lend money to, or otherwise assist, any such person or company, and to take or otherwise acquire and hold shares or stock in, or securities of, and to subsidize or otherwise assist, any such person or company, and to sell, hold, reissue with or without guarantee, or otherwise deal with such shares, stock or securities.

[This clause is from the charter of the American & Foreign Line, filed at Trenton, N. J., Dec. 31, 1901.

As to the right of a corporation to become a member of a partnership, see *People v. North River Sugar Refining Co.*, 121 N. Y., 582.]

Form 277.

To guarantee dividends and interest on shares, bonds, etc., of other companies:

To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other con-

tract or obligation of, any corporation whenever proper or necessary for the business of the corporation in the judgment of its directors; and provided the required authority be first obtained from the board of directors for that purpose.

[As to the power of a corporation to guarantee the bonds of another corporation, see *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217, 247.]

Form 278.

To guarantee dividends, etc.:

To guarantee dividends on any shares of the capital stock of any corporation in which this corporation has an interest as stockholder, and to endorse, or otherwise guarantee the principal and interest, or either, of any bonds, securities or other evidences of indebtedness created by any corporation in which this corporation has such an interest, provided that authority for any such endorsement of guarantee be first given by resolution adopted by vote of at least two-thirds of the whole board of directors of this corporation.

Form 279.

To lend money, etc.:

To lend and advance money or give credit to such persons and on such terms as may seem expedient, and in particular to customers and others having dealings with the company, and to give guarantees or become security for any such persons.

Form 280.

To borrow money, issue bonds, etc.:

To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise.

[New Jersey corporations have this power by implication. (*Lucas v. Pitney*, 27 N. J. Law, 221.)]

Form 281.

To borrow money and issue bonds for money or property:

To borrow or raise moneys for any purpose of its incorporation, to issue its bonds, notes or other obligations for moneys so borrowed, or in payment of or in exchange for, any real or personal

property or rights or franchises acquired or other value received by the corporation and to secure such obligations by pledge, or mortgage under deed of trust or otherwise, of or upon the whole or any part of the property at any time held by the corporation, and to sell or pledge such bonds, or discount such notes or other obligations, for its proper corporate purposes.

Form 282.

To issue bonds, etc., in discretion of directors:

To issue bonds, debentures or obligations of the company, from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge, or lien on any or all of the real and personal property, rights, privileges and franchises of the company wheresoever situated, acquired and to be acquired, and to sell or otherwise dispose of any or all of the same, all in such manner and upon such terms as the board of directors may deem judicious.

Form 283.

To acquire the company's own stock:

The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless otherwise determined by a majority of the board of directors, or a majority of the stockholders.

[As to the power of a corporation to purchase its own stock, see p. 129, ante.]

Form 284.

To remunerate promoters:

To remunerate any person or persons or corporation for services rendered or to be rendered, in placing, or assisting to place, or guaranteeing the placing of, any of the shares of the company's capital, or any debentures or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business.

Form 285.**To benefit employees, etc.:**

To support and subscribe to any charitable or public object, and any institution, society, or club which may be for the benefit of the company or its employees, or may be connected with any town or place where the company carries on business; to give pensions, gratuities or charitable aid to any person or persons who may have served the company, or to the wives, children or other relatives of such persons; to make payments towards insurance; and to form and contribute to provident and benefit funds for the benefit of any persons employed by the company.

Form 286.**To conduct business in other states:**

To have one or more offices, to carry on all or any part of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place, but subject always to the laws thereof.

[If the company is to do business in California, see *Pinney v. Nelson*, 183 U. S., 144.]

Form 287.**To conduct business in other states (another form):**

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property in or out of this state, and in such place and places in the several states and territories of the United States, colonial possessions or territorial acquisitions of the United States, and in foreign countries, as shall from time to time be found necessary and convenient for the purposes of the company's business.

[In some states local laws would prohibit a foreign corporation from exercising these broad powers. It is, therefore, sometimes desirable either to prefix the condition, "to the extent and in the manner permitted by the laws of each state, territory or country in which the company may do business," to conduct its business, etc., or to add the clause, "but always subject to local laws." But in this case the decision in *Pinney v. Nelson* (supra) is to be considered. See also notes to Section 7, p. 32, ante.]

Form 288.**To operate railroads, etc., out of New Jersey:**

To build, buy or lease and to operate railroads, tramways, canals and terminals, without the State of New Jersey, at ports or points of shipment, together with such other transportation facilities as may be required for the company's business; to develop any properties, water powers, industries, manufacturing or merchandising enterprises and companies for transportation by land or water, in which this corporation may be interested; but this company shall not engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

Form 289.**To acquire property out of New Jersey by condemnation:**

To enable it to accomplish the objects and purposes of its creation, and when thereunto duly authorized by the laws of the Republic of Mexico, the corporation may acquire by condemnation or purchase rights of way and other real and personal property, and upon complying with the laws of said republic with respect to making compensation therefor, may enter upon, take hold and occupy such real and personal property.

Form 290.**To donate lands for rights of way, etc.:**

In order to promote the interests of the company, and to encourage the settlement, sale, leasing or utilization of the company's lands, to donate any of said lands for rights of way for railroads, tramways, canals or waterways, manufacturing sites, stations, houses, town sites, and such other uses as in the judgment of the board of directors will be conducive to the company's interests; and to make and establish such restrictions and conditions, perpetual or limited, upon and in respect of any of the property of the company at any time by it owned, as the board of directors may deem judicious.

Form 291.**To locate mining claims, etc.:**

Either directly or through any agent or representative, to enter upon and locate any mining claims or mining rights in any of the United States of America, or the territories thereof, or in

any foreign countries, and in connection therewith to contract with the government or governments of any foreign countries, or any of the authorities thereof, for mining, manufacturing, trading or other concessions or rights, upon such terms as may be deemed advantageous; and to perform any conditions upon which such grants or concessions may be obtained, with power to comply in all respects with any such conditions; including the acquisition of water power, water rights, the building of reservoirs, conduits and any other works of utility which may be deemed advantageous or desirable.

Form 292.

To divide assets in specie:

To distribute any of the property of the company in specie among the members.

Form 293.

To advertise products of company:

To adopt such means of making known to the public the products of the company as may seem expedient, and in particular by advertising, by circulars, by purchase and exhibition of works of art or interest, by publication of pamphlets, books and periodicals.

Form 294.

To carry on other business:

- To carry on any other business (whether manufacturing or otherwise) which may, in the discretion of the directors, seem capable of being conveniently carried on in connection with the above or
- calculated directly or indirectly to enhance the value of the company's property or rights.

Form 295.

General words:

To do any or all of the things in this certificate set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

Form 296.**General words:**

To do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or incidental to the powers herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in, any property or otherwise; with all the powers now or hereafter conferred by the laws of New Jersey upon corporations under the act hereinafter referred to.

[As to the utility of such clauses, see the leading English cases, *Re Peruvian Rys. Co.*, L. R., 2 Ch., 617; *Re Baglan Hall Co.*, 5 Ch. 356; *Simpson v. Westminster Palace Hotel Co.*, 8 H. L. C., 712; *Taunton v. Royal Insurance Co.*, 2 H. & M., 135; see also *Ellerman v. Chicago Junction Rys., &c., Co.*, 49 N. J. Eq., 217.]

Form 297.**Interpretation clause:**

It is the intention that the objects and powers specified and clauses contained in this paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects and powers specified in each of the clauses of this paragraph shall be regarded as independent objects and powers.

Form 298.**Interpretation clause:**

But nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit or trust company, banking corporation or savings bank or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid.

[A clause such as the foregoing is commonly used in cases where the objects as stated might be construed as an attempt to secure powers prohibited to corporations organized under the General Corporation Act by §§3, 6, pp. 24, 28, ante.]

CAPITAL STOCK CLAUSES.

[Sections 8, subdiv. IV, and 18, pp. 35, 76.]

The power to create differentiating shares of stock is given by Section 18 of the General Corporation Act. Subject to the limitations therein prescribed, the terms and conditions on which the preferred stocks are issued must be set forth in the certificate of incorporation, original or amended. The statute does not define the rights of preferred stockholders, but such rights arise by contract, i. e., the certificate of incorporation. By the amendment of 1901 the certificate of incorporation is apparently the sole evidence of this contract, as the provisions of the act requiring certain matters to be set forth in the certificates of stock have been stricken out. It is to be borne in mind, however, in drafting certificates of incorporation, that this contract is not unalterable unless expressly stated so to be by its own terms. Section 27 contains wide powers of amendment and alteration, and its provisions are part of the charter of every corporation formed since its enactment. (See cases cited at p. 102.)

If it is intended that the rights of the preferred shareholders shall be inviolable it is necessary to insert in the certificate of incorporation a clause to that effect. This is authorized by subdivision VII of §8.

In drafting the clauses for the preferred stock the following matters are to be provided for:

(1) Amount of each class. The preferred stock authorized should not exceed two-thirds of the entire capital stock.

(2) Rate of dividend on the preferred stock, which must not exceed eight per centum per annum.

(3) Dates for the declaration and payment of dividends, which must be yearly, half-yearly or quarterly. This matter may, however, be relegated to the by-laws.

(4) Whether the dividends on preferred stock are to be cumulative or non-cumulative.

(5) Whether the holders of preferred stock are to be preferred on winding up and to what extent, and whether they are to participate any further in the distribution of the assets, i. e., are they to share with the common stockholders in the distribution of the surplus assets after both classes of stockholders have been paid in full the par value of their shares?

(6) Voting powers of the preferred stockholders. If nothing is said they have the same voting rights as the common stockholders. It may be provided that the preferred shall have no voting powers whatever, or that they may have the power to elect exclusively a class, either a majority or minority, of the directors.

(7) Preferred stock may be made subject to redemption at any time after three years from the date of issue at not less than par. Provision may be made, if desired, for the creation of a sinking fund to redeem the preferred stock.

The following precedents are taken from the certificates of incorporation of well-known companies, and illustrate the extent to which the terms of preferred stock may be varied.

Form 299.

ATLANTIC SNUFF COMPANY.

Cumulative dividends, payable quarterly; preferred on dissolution both as to principal and dividends:

Said preferred stock shall entitle the holder thereof to receive out of the net earnings, and the company shall be bound to pay a fixed yearly cumulative dividend of eight per centum, but no more, payable quarterly, before any dividend shall be set apart or paid on the common stock.

Such preferred stock may be issued as and when the board of directors shall determine, and the vote or assent of the stockholders shall not be necessary for such issue.

The holders of preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full, both the principal of their shares and the accrued dividends charged before any amount shall be paid to the holders of the general or common stock.

Form 300.

AMERICAN SUGAR REFINING COMPANY.

Cumulative dividends, payable semi-annually:

That the total amount of the capital stock of said company is fifty million dollars, the number of shares into which the same is divided is five hundred thousand, and the par value of each share is one hundred dollars.

That of this amount one-half will be general stock and one-half preferred stock, and that the holders of such preferred stock shall be entitled to receive from the surplus or net profits arising from the business of the corporation a fixed yearly dividend of seven per centum, payable semi-annually on the 2d days of January and July in each year, before any dividend shall be set apart or paid on the said general stock.

Should the surplus or net profits arising from the business of the corporation, prior to any dividend day, be insufficient to pay the dividend upon the preferred stock, such dividend shall be payable from future profits, and no dividend shall at any time be paid upon general stock until the full amount of seven per centum per annum up to that time upon all the preferred stock shall have been paid or set apart. The holders of preferred stock shall be entitled to no dividends beyond the seven per centum aforesaid.

Form 301.

AMERICAN TOBACCO COMPANY.

Non-cumulative dividends, payable half-yearly; preferred as to capital only:

Said preferred stock shall entitle the holders to receive in each year a dividend of eight per cent., payable half-yearly before any dividend shall be set apart or paid on said general or common stock, and if the net profits in any year shall not be sufficient to pay a dividend of eight per cent. on said preferred stock, then such dividend shall be paid thereon as the net profits of the year will suffice to pay. The holders of the preferred stock shall have a preference on the assets of the company, but the dividends thereon are not to be cumulative, but shall be payable each year only out of profits of that year, and such preferred stock and the certificates therefor may be issued by the board of directors by resolution.

Form 302.

BULLOCK ELECTRIC MANUFACTURING COMPANY.

Accumulated dividends, payable quarterly on fixed days—preferred as to capital and dividends on dissolution—Redemption clause—Provisions for control of company by preferred shareholders during default in dividends:

The said preferred shares shall carry, and the company shall be bound to pay thereon, a fixed yearly preferential cumulative dividend at the rate of, but in no event exceeding, six (6) per centum per annum, payable quarterly on the first days of January, April, July and October.

In case of liquidation or dissolution of the company, the holders of the preferred shares shall be entitled to be paid in full the par value of their preferred shares, and the dividends accumulated and unpaid thereon before any amount shall be paid to the holders of the common shares; and after such payment in full to the hold-

ers of the preferred shares the surplus assets and funds of the company shall belong to and be divided among the holders of the common shares.

The preferred shares shall, at the discretion of the company, be subject to redemption at the price of one hundred and ten dollars (\$110) per share, and dividends accumulated and unpaid thereon, on the first day of January, 1911, or on the first day of January of any year thereafter; provided that at least three months' notice of redemption shall have been given to the holders of record of the stock so to be redeemed, which said notice may be given either by publication or by mail as the by-laws may prescribe.

After the payment in full of all dividends on the preferred shares, as hereinabove provided, the balance of the net profits of the company may be distributed as dividends among the holders of the common shares as when the board of directors shall in their discretion determine, and the board of directors may, at the time of declaring or paying any quarterly dividend on the preferred shares, declare or pay a dividend on the common shares covering a like period; provided, however, that at no time shall any dividend be paid upon the common shares unless at the time of such payment the accumulated and undivided profits and the surplus of the company shall be at least equal to or aggregate three years' dividends upon the entire amount of the preferred shares then issued and outstanding.

The board of directors of the company shall be divided into two classes, and the number of directors composing each class shall be prescribed by the by-laws.

The first class shall always comprise at least one-fifth in number of the whole board, and shall always be elected exclusively by the holders of the preferred shares.

The second class shall comprise the remaining members of the board, and shall be elected exclusively by the holders of the common shares; provided, however, that if any default shall occur in the payment of dividends upon the preferred shares, and such default in payment shall continue for more than two years, or if the company shall not earn the dividends on such preferred shares for any period of two years, and there shall not be accumulated and undivided profits on hand sufficient in amount to pay all dividends, accumulated on the preferred stock, then a special meeting of the stockholders of the company may be called by any preferred shareholder, or shareholders, owning a majority of the preferred shares of the company, which meeting shall be convened on ten (10) days' notice, by mailing a copy of such notice to each preferred shareholder of record at the time such notice is mailed, to the address of such shareholder, as the same appears at the time upon the preferred stock ledger, and at such meeting if said dividend shall still

remain unpaid and also unearned, the holders of a majority of the preferred shares present or represented at said meeting shall be entitled to elect a new second class, in the place and stead of said second class elected by the common shareholders of the board of directors of the company, and the voting power theretofore vested exclusively in the holders of common shares shall, for the time being solely, cease.

The election of the new second class in the manner hereinbefore specified shall terminate the term of office of each member of the existing board of directors elected by the common shareholders. Thereafter, and until all arrearages of dividends on the preferred shares shall have been paid or earned, the voting power theretofore vested exclusively in the holders of common shares shall vest and remain in the holders of the preferred shares.

One month after payment of all defaulted dividends upon the preferred shares or the accumulation of net earnings equal to said defaulted dividends, the exclusive voting power then vested in the holders of preferred shares to elect said directors of the said second class shall cease and the original voting power shall be restored to the holders of the common shares and a new second class of directors may be elected by the exclusive vote of the holders of common shares at a meeting duly called and held as above provided concerning any meeting following a default in the payment of dividends on the preferred shares, save only that notice thereof shall be given alone to the holders of the common shares, and such meeting being held and such new second class being elected, the term of office of each director of the second class elected by a vote of the holders of the preferred shares shall at once expire.

During any period of time that the corporation shall be managed by a board of directors elected by the preferred shareholders, the books of account showing the business and earnings of the said corporation shall be open at all reasonable times, not oftener than once in three months, to the inspection and examination of the owners of a majority of the common shares.

Save as hereinabove provided, the holders of preferred and common shares shall have equal voting powers at all meetings of the stockholders.

Form 303.

CONTINENTAL CAR COMPANY.

Amount of preferred stock not specified—Cumulative dividends, payable half-yearly—Preferred as to capital on dissolution—Redemption:

The amount of the total authorized capital stock of the corporation is eighteen million dollars; the number of shares into which

the capital stock is divided is one hundred and eighty thousand, and the par value of each share is one hundred dollars. The amount of capital stock with which it will commence business is five thousand dollars, consisting of twenty-five shares of preferred stock and twenty-five shares of common stock.

From time to time the preferred stock and the common stock shall be issued in such amounts and proportion as shall be determined by the board of directors, and as may be permitted by law.

The holders of the preferred stock are entitled to cumulative dividends thereon at the rate of, but not exceeding, seven per centum for each and every fiscal year of the company, payable out of any and all surplus or net profits, semi-annually, when declared by the board of directors; and, in addition thereto, in the event of the dissolution or liquidation of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the assets of the corporation before anything shall be paid therefrom to the holders of the common stock.

The preferred stock shall be subject to redemption, at the option of the corporation, on the first day of June, 1901,* or on the date of payment of any preferred stock dividend thereafter at the price of one hundred and ten dollars for each share, and the amount of dividend accumulated and unpaid thereon at the date of redemption.

No dividend shall be paid on the common stock until a dividend of seven per centum for each and every fiscal year of the company shall have been paid in full upon the cumulative preferred stock.

After providing for the payment of the cumulative dividends upon the preferred stock, all dividends which may be declared out of the surplus or net profits shall be payable to the holders of the common stock.

[Note.]—This precedent presents an exception to the ruling of the office of the Secretary of State, that certificates of incorporation must state the amount authorized of preferred and common stock, separately and respectively, and that no certificate of incorporation will be placed upon file which leaves to the directors the determination of the relative amounts of each class of stock.

This ruling is based upon an opinion of the Attorney-General of the State of New Jersey to the effect that while the language of the statute (Sections 8 and 18) does not expressly call for this subdivision of the total authorized capital into the respective amounts of preferred and common stock authorized to be issued,

*Preferred stock cannot now be made redeemable except after three years from the date of issue. (§18, p. 76, ante. For Form see (a) p. 354.)

nevertheless this is the implied requirement of the statute, and should be in every certificate of incorporation in order to entitle it to be placed of record.

[See notes to Sections 8 and 18.]

Form 304.

CONTINENTAL TOBACCO COMPANY.

Non-cumulative dividends, payable quarterly, half-yearly or yearly as provided by directors—Preferred as to capital on dissolution:

The holders of said preferred stock shall be entitled to receive in each year, out of the accumulated profits of the corporation, in excess of such sum, if any, as shall have been fixed and reserved as a working capital, a non-cumulative dividend of seven per cent., payable quarterly, half-yearly or yearly, as the directors may from time to time determine, before any dividend shall be set apart or paid on the general or common stock of the corporation. If the accumulated profits in excess of the sum fixed and reserved as a working capital shall not be sufficient to pay, in any year, a dividend of seven per cent. on said preferred stock, then such dividend shall be paid thereon as such excess of accumulated profits will suffice to pay; but the dividends thereon shall not be cumulative, but shall be payable for each year only out of the accumulated profits in excess of the sum fixed and reserved as a working capital and not out of accumulated profits of any subsequent year or years.

Upon the dissolution of the corporation, or upon final distribution of its assets, and after the payment of its debts, the preferred stock shall be redeemed at par if the assets of the corporation, including surplus and accumulated profits, are sufficient. If the assets are not sufficient to redeem said stock at par, then all said assets, or their proceeds, shall be distributed ratably among the holders of such preferred stock. If the assets are more than sufficient to redeem the preferred stock at par, all remaining after such redemption shall be divided ratably among the holders of the general or common stock of the corporation.

Form 305.

EL PASO ELECTRIC COMPANY.

Non-cumulative dividends, payable half-yearly on fixed dates—Preferred as to capital on dissolution:

The preferred stock is entitled out of surplus net profits, determined by the board of directors as hereinafter provided, to non-

cumulative semi-annual dividends, when declared by the board of directors, on the second Monday of January and the second Monday of July in each year at the rate of but never exceeding six (6) per cent. per annum for the fiscal year ending with the 31st day of December, 1902, and for each and every fiscal year thereafter, payable in preference and priority to any payment for and any dividends upon the common stock for such fiscal year; and, if such surplus net profits of any fiscal year determined by the board of directors as hereinafter provided are not sufficient to pay a dividend of six (6) per cent. on said preferred stock, then such dividend declared by the board of directors as herein provided shall be paid thereon as such surplus net profits of such fiscal year determined by the board of directors as hereafter provided will suffice to pay. In the event of the dissolution of this corporation, or a sale of its entire assets, the preferred stock is entitled to receive its par value out of the funds of this corporation before anything is paid therefrom on the common stock.

Form 306.

ENGINEERING CONTRACT COMPANY.

Cumulative dividends—Preferred to share equally with common after specified dividend on common—Preferred as to capital and dividends on dissolution, with right to share equally in surplus after payment of common at par:

The preferred stock shall be entitled, out of any and all surplus net profits, whenever ascertained, to cumulative dividends at the rate of eight per cent. per annum in each and every year hereafter, in preference and priority to any payment of any dividends on the common stock for such year. The common stock shall be subject to the prior rights of holders of the preferred stock as herein declared. If, after providing for the payment of full dividends for any year on the preferred stock, and for any balance that may remain due on the cumulative dividends on such preferred stock for preceding years, there shall remain any surplus net profits, any and all such surplus net profits not in the opinion of the board of directors required to provide for the maintenance, improvement, enlargement and operation of the property and business of the corporation, or for the payment of its liabilities, shall be applicable to dividends upon the common stock for such year, to the extent of, but not exceeding, eight per cent. upon the said common stock, when and as from time to time the same shall be declared by the board of directors; which dividends upon the common stock shall not be cumulative, but shall only be paid if earned. The remainder of any such surplus net profits shall then be applicable

to the payment of further dividends equally per share upon both preferred and common stock. The board of directors may declare, and out of such surplus net profits may pay, annual dividends upon the common stock of the said corporation, to the extent of, but not exceeding, eight per cent. upon such common stock, but no such annual dividends shall be declared or paid until the cumulative dividends shall have been paid in full upon the preferred stock for such year, and for all preceding years; and after the payment of such cumulative dividends upon the preferred stock, and such dividends upon the common stock, to the amount of, but not exceeding, eight per cent., out of any further surplus net profits the board of directors may declare and pay dividends equally per share upon the preferred and common stock. In case of the dissolution or termination of the corporation, the preferred stock and the holders thereof shall also be entitled to preference in the distribution of the assets and property of the corporation, and any and all such assets and property in case of such dissolution shall be applied first to the payment in full of the principal of the said preferred capital stock at par with all cumulative dividends thereon in preference and priority to any payment upon the common stock, and second, to the payment of the principal of the common stock at par; and any balance remaining shall be divided equally per share among the holders of preferred and common stock.

Form 307.

FORE RIVER SHIP AND ENGINE CO.

Non-cumulative dividends, payable half-yearly—Preferred as to capital and premium on dissolution—Provision for sinking fund to redeem preferred stock:

The preferred and common stock have equal voting powers, and shall be issued from time to time in such amounts and proportions as may be determined by the board of directors and as may be permitted by law.

The preferred stock is entitled out of surplus net profits, determined by the board of directors as hereinafter provided, to non-cumulative semi-annual dividends, when declared by the board of directors, on the second Monday of January and the second Monday of July in each year at the rate of, but never exceeding, seven (7) per cent. per annum for the fiscal year ending with the thirty-first day of December, 1901, and for each and every fiscal year thereafter, payable in preference and priority to any payment to the sinking fund hereinafter provided for and any dividends upon the common stock for such fiscal year, and, if such surplus net profits of any fiscal year determined by the board of directors as here-

inafter provided are not sufficient to pay a dividend of seven (7) per cent. on said preferred stock, then such dividend declared by the board of directors as herein provided shall be paid thereon as such surplus net profits of such fiscal year determined by the board of directors as hereinafter provided will suffice to pay. In the event of the dissolution of this corporation or a sale of its entire assets, the preferred stock is entitled to receive one hundred and twenty-five dollars (\$125) per share out of the funds of this corporation before anything is paid therefrom on the common stock.

The common stock is subject to the preferred and prior rights of the preferred stock, but if after the payment of full dividends for any fiscal year on the preferred stock, there remain surplus net profits of such year, determined by the board of directors as hereinafter provided, such surplus net profits of such year, and of any prior fiscal year or years for which full dividends have been paid on the preferred stock, shall be applied when declared by the board of directors, as follows:

One-half to a sinking fund to redeem and discharge the preferred stock, as hereinafter provided, and one-half to dividends upon the common stock.

After all the preferred stock has been redeemed and discharged as hereinafter provided, the surplus net profits of each and every fiscal year, thereafter, determined by the board of directors as hereinafter provided, shall be applied when declared by the board of directors to dividends upon the common stock.

The sinking fund hereinbefore provided for shall accumulate to the sum of one hundred thousand dollars (\$100,000). The board of directors shall then notify the holders of preferred stock that this corporation will apply such sum of one hundred thousand dollars (\$100,000) to the purchase, redemption and discharge of its preferred stock at not exceeding one hundred and twenty-five dollars (\$125) per share, and shall invite offers to sell such preferred stock. The lowest of such offers to sell, if at not exceeding one hundred and twenty-five dollars (\$125) per share, shall be accepted until such sum of one hundred thousand dollars (\$100,000) shall have been exhausted in the purchase of such preferred stock; and if such preferred stock is not offered at one hundred and twenty-five dollars (\$125) or less per share, or is not offered to the amount of one hundred thousand dollars (\$100,000), then so much of said preferred stock shall be drawn by lot, redeemed and discharged at one hundred and twenty-five dollars (\$125) per share as will exhaust such sum of one hundred thousand dollars (\$100,000).^{*} The deposit

^{*}Preferred stock cannot now be made redeemable except after three years from the date of issue. (§18, p. 76, ante. For form see (a) p. 354.)

with a trust company of the amount of money needed to pay and redeem such preferred stock so drawn by lot shall stop all dividends thereon from and after the date of such deposit.

The foregoing provisions for a sinking fund and for the purchase, call, redemption and discharge of preferred stock shall be applicable until all of the preferred stock of this corporation has been redeemed and discharged and the methods by and manner in which such provisions shall be exercised shall be determined by the board of directors, and such determination shall be final and conclusive. Preferred stock redeemed and discharged in accordance with the foregoing provisions shall not be reissued.

Form 308.

INTERNATIONAL NICKEL COMPANY.

Non-cumulative dividends, payable quarterly or otherwise as determined by board—Preferred as to capital on dissolution:

The holders of the preferred stock shall be entitled, out of any and all surplus or net profits, whenever declared by the board of directors, to non-cumulative dividends at the rate of, but not exceeding, six per cent. (6%) per annum, for the fiscal year beginning on the first day of April, 1902, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividend on the common stock for such fiscal year, and payable quarterly, or otherwise, as the board of directors may from time to time determine. Such dividends on the preferred stock shall be payable out of the accumulated profits and not out of profits of any subsequent year or years.

All remaining surplus or net profits of such year, beginning April 1st, 1902, and of any other fiscal year, shall be applicable to dividends upon the common stock, and payable quarterly or otherwise, and as the same shall be declared by the board of directors.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par amount of their shares, and after the payment to the holders of the preferred stock of its par value, the remaining assets and funds shall be divided and paid to the holders of the common stock, according to their respective shares.

The common stock shall be subject to the prior rights of the holders of the preferred stock, as herein declared.

Form 309.

KENTUCKY DISTILLERIES AND WAREHOUSE COMPANY.**Cumulative dividends, payable quarterly at times fixed by by-laws—****Preferred as to capital on dissolution:**

The holders of such preferred stock shall be entitled to receive from the surplus or net profits arising from the business of said corporation a fixed yearly dividend of seven per cent., payable quarterly at such time or times as shall be fixed by the by-laws, before any dividend shall be set apart or paid on said common stock; should the surplus or net profits arising from the business of said corporation prior to any dividend day be insufficient to pay the dividend upon the preferred stock, such dividend shall be payable from future profits, and no dividend shall at any time be paid upon the common stock until dividends at the rate of seven per cent. per annum up to that time upon all the preferred stock then issued and outstanding shall have been paid or set apart. The dividends upon the preferred stock shall be cumulative and shall not exceed seven per cent. per annum. After the dividend upon the preferred stock shall have been paid or set aside as aforesaid, the holders of the common stock shall be entitled to receive from the surplus or net profits arising from the business of said corporation, dividends of such amounts as shall be determined from time to time by the board of directors, and which shall be payable at such time or times as shall be fixed by the by-laws. The preferred stock is to have preference in the division of the assets to the extent of its par value in the winding up or dissolution of said corporation.

Form 310.**MARSHALL—WELLS HARDWARE COMPANY.****Cumulative preferred and employees' co-operative preferred stock:**

The holders of the preferred stock and the holders of employees' co-operative preferred stock shall be entitled to receive when and as declared, from the surplus or any profits of the corporation, yearly dividends at the rate of six per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on preferred stock and on the employees' co-operative preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid, or set apart; so that, if in any year dividends amounting to six (6) per centum shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock, and on the employees' co-operative preferred stock, for all previous years shall have been declared, and shall have become payable, and

the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years, and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock and the holders of the employees' co-operative preferred stock shall be entitled to be paid in full both the par amount of their shares, and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock, and the holders of the employees' co-operative preferred stock, of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

Preferred stock, at the discretion of the company, shall be subject to redemption at par on the first day of January, A. D. 1912, or on the first dividend day in any year thereafter.

Certificates for, or other evidence of, the ownership of preferred stock shall be issued only for ten shares or some multiple of ten shares, except when otherwise expressly provided by statute; and the company, at its option, may redeem at par, on any dividend day, any preferred stock which is not evidenced by a certificate of stock for ten or some multiple of ten shares, such redemption not to be made in violation of law.

Redemption of preferred stock may be made at the then registered office of the company.

An original issue of employees' co-operative preferred stock shall be made only to an employee of the company.

Not exceeding fifty (50) shares of employees' co-operative preferred stock may be issued to or registered in the name of any one person, except as otherwise provided by law. When the holder of any such stock ceases (voluntary or otherwise), to be an employee of the company, the company shall have the right to at once redeem his (or her) stock at par and accrued dividend to date of redemption, and at the written request of the holder of such stock, the company shall, within ten (10) days after delivery of such request, redeem any such employees' co-operative preferred stock at par and accrued dividend to date of redemption, subject only to express statutory limitations.

If any employees' co-operative preferred stock is presented for transfer, and shall be transferred to any person not an employee of the company, or if more than fifty (50) shares of such stock shall

be transferred to one person, the company may, at its discretion, at any time after such transfer, redeem at par and accumulated dividends, all or any part of such stock so transferred. If and while the company has an office or place of business in Duluth, Minnesota, all redemptions of employees' co-operative preferred stock shall be made, and all dividends shall be paid at such office, and at the option of the company, by the bank check of the company drawn on a national bank, doing business in said city of Duluth; and any written request for the redemption of any such employees' co-operative preferred stock shall be delivered in person, or by mail, to the president, secretary, or other principal officer of the company in its office or place of business in said city of Duluth, if it then has such office or place of business in said city. The privilege of subscribing for, holding and owning employees' co-operative preferred stock may be extended by the by-laws to employees of any corporation in which the company is a stockholder, on such conditions and with such limitations and restrictions as shall from time to time be specified in the by-laws, always preserving to the holder of such stock the rights hereinbefore granted employees of the company, and reserving to the company the right of redemption hereinbefore specified.

The holding of preferred stock or of employees' co-operative preferred stock shall not confer any voting powers. Only registered holders of the common stock shall be entitled to vote at any annual, special or other meeting of stockholders, and a registered holder of common stock shall be only entitled to one vote for each share of common stock held by him, subject only to statutory limitations.

[The foregoing precedent is cited rather as an instance of the length to which counsel may go in creating stock preferences and differentiating features in the division of profits and regulation of the company.

It was probably drawn to fit peculiar circumstances, and care should be used in adopting it as a whole.]

Form 311.

NATIONAL CANDY COMPANY.

Three classes of shares—First preferred cumulative, dividends payable half-yearly at times fixed by by-laws—Preferred as to capital and dividends on dissolution—Second preferred cumulative, dividends payable half-yearly at times fixed by by-laws—Preferred as to capital and dividends on dissolution—Cumulative voting on all shares.

The holders of the first preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the

corporation yearly dividends at the rate of seven per cent. (7%) per annum, and no more, payable semi-annually on the dates to be fixed by the by-laws. The dividends on the first preferred stock shall be cumulative and shall be payable before any dividends on the second preferred stock or the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per cent. (7%) shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the second preferred or common stock. Whenever all cumulative dividends on the first preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued semi-annual installment for the current year shall have been declared, and the company shall have paid such declared cumulative dividends for previous years, and such accrued semi-annual installment upon said first preferred stock, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the holders of the second preferred stock shall be entitled to receive when and as declared from the remaining surplus or net profits of the corporation after the payment of the cumulative dividends and accrued semi-annual installment upon the first preferred stock as aforesaid yearly dividends at the rate of seven per cent. (7%) per annum and no more, payable semi-annually on dates to be fixed by the by-laws. The dividends on the said second preferred stock shall also be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart, so that if in any year dividends amounting to seven per cent. (7%) shall not have been paid on said second preferred stock, the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock, both first preferred and second preferred, for all previous years shall have been declared and shall have become payable, and the accrued semi-annual installments for all the preferred stock for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years upon both said first preferred and second preferred stock in the order aforesaid, and also such accrued semi-annual installments thereon as aforesaid, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof as aforesaid, the board of directors may declare dividends on the common stock payable then or thereafter out of any remaining surplus or net profits.

Each share of first preferred, second preferred and common stock shall have the same voting power in all corporate affairs, and each share thereof shall be entitled to one vote in such affairs with the power of cumulative voting as conferred by law, and from time to time the first preferred, second preferred, common stock, or any one or more of said classes of stock may be increased according

to law, and may be issued in such amounts and proportions and for such consideration as shall be determined by the board of directors and permitted by law. In the event of any liquidation, dissolution or winding up, whether voluntary or involuntary, of the corporation, the holders of the first preferred stock shall share equally, and be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the second preferred stock, and after the payment in full of all unpaid dividends accrued upon and the par value of the first preferred stock then the holders of the second preferred stock shall share equally and be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock, and after the payment in the order aforesaid to the holders of all the preferred stock of its par value and of all the unpaid declared or accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock equally and pro rata according to their respective shares.

Form 312.

NATIONAL SALT COMPANY.

Non-cumulative dividends—Preferred as to capital on dissolution.

The preferred stock shall receive dividends at the rate of and not exceeding seven per cent. in each year from April 15th, 1899, but such dividends shall not be cumulative, and if the net earnings of any year declarable as dividends shall not be sufficient to pay for such year seven per cent. upon said preferred stock, the same shall not be made up from any profits of any later period. The balance of the net profits of the company declarable as dividends shall be distributed among the holders of the common stock.

The par value of the preferred stock shall, in the event of the dissolution of the company and division of its assets, be paid in full before any sum whatever shall be paid in liquidation on account of the common stock, and thereafter the common stock shall be entitled to the entire assets remaining.

Form 313.

NATIONAL STEEL COMPANY.

Cumulative dividends, payable quarterly on fixed dates—Special voting powers of preferred shareholders—Preferred as to capital and dividends on dissolution.

The total amount of the capital stock of said corporation is to be fifty-nine million dollars, divided into five hundred and ninety

thousand shares of one hundred dollars each. Of the said stock two hundred and seventy thousand shares, amounting at par to twenty-seven million dollars, are to be preferred stock, and three hundred and twenty thousand shares, amounting at par to thirty-two million dollars, are to be common stock.

The rights, privileges and conditions following shall attach to the shares aforesaid, that is to say:

(1) The common stock shall be subordinate to the rights of the preferred stock, except that both preferred and common stock shall have equal voting powers.

(2) The corporation shall not be at liberty, without the consent in writing first obtained of the holders of two-thirds in amount of the preferred stock issued and outstanding—

(a) To create or issue any other or further shares ranking in any respect *pari passu* with or in priority to the aforesaid issue of \$27,000,000 of preference shares;

(b) Nor to create any charge, except as herein provided, upon the net profits of the corporation which shall not be subordinate to the rights of the preference shares;

(c) Nor to reserve a surplus fund which shall not be chargeable with the payment of the accrued dividends on the preference shares.

(3) The said preference shares shall carry a fixed cumulative preferential dividend at the rate of, but never exceeding, seven per cent. (7%) per annum on the par value thereof, and such dividends shall be declared quarterly on the second days of January, April, July and October in each year, or at such other times as the board of directors or the executive committee shall see fit and determine.

If in any year dividends amounting to seven per cent. (7%) per annum shall not be paid on such preferred stock, the deficiency shall be a charge on the net profits and be payable, but without interest, before any dividends shall be paid upon or set apart for the common stock.

(4) The balance of the net profits of the corporation after the payment of said cumulative dividend at the rate of seven per cent. (7%) per annum to the holders of the preferred stock may be distributed as dividends among the holders of the general or common stock, as and when the board of directors or the executive committee shall in their discretion determine.

(5) In the event of the liquidation or dissolution of the corporation the surplus assets and funds thereof shall be applied in the first place in repaying to the holders of the aforesaid cumulative preference shares the full amount of the principal thereof and the accrued dividends, if any, charged before any amount shall be paid upon the common stock, and after such payment in full to

the holders of said cumulative preference shares, the surplus assets and funds shall belong to and be divided among the holders of the other shares.

From time to time the preferred and common stock may be issued in such amount and proportion as shall be determined by the board of directors, in accordance with the laws of the State of New Jersey.

Form 314.

NATIONAL TIMBER COMPANY.

Cumulative dividends, payable yearly, half-yearly or quarterly as determined by board—Preferred as to capital and dividends on dissolution—Sinking fund—Redemption of preferred shares.

The holders of the preferred stock shall be entitled to cumulative dividends thereon at the rate of seven per centum for each and every fiscal year of the company, and no more, payable out of any and all surplus or net profits quarterly, half-yearly or yearly, when declared by the board of directors, and in addition thereto, in the event of the dissolution or liquidation of the corporation or a sale of all its assets, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares and all accumulated dividends, out of the assets of the corporation before anything shall be paid therefrom to the holders of the common stock.

After providing for the payment of all accumulated dividends upon the preferred stock at the rate of seven per centum for each and every fiscal year of the company, the remaining surplus or net profits, as determined by the board of directors, shall be applied as follows:

Twenty-five per centum of such remaining surplus or net profits shall be set aside and paid into a sinking fund, in the interests and for the protection of the preferred stock. The directors shall have the right, in their discretion, to use and apply all or any part of such sinking fund, at any time, either for the purchase of additional timber or timber lands for the company, or (at any time after three years from the issue thereof) for the redemption and discharge of any or all of the preferred stock, at the price of one hundred and twenty dollars for each share, together with all accrued dividends thereon, in such manner and upon such notice as the by-laws may provide.

After providing for the payment of all accumulated dividends upon the preferred stock, at the rate of seven per centum for each and every fiscal year of the company, and after setting aside twenty-five per centum of the remaining surplus or net profits for a sinking

fund, as hereinabove provided, the directors may, in their discretion, whenever the remaining surplus or net profits are applicable thereto, declare and pay dividends therefrom upon the common stock.

The board of directors may, in their discretion, declare and pay dividends on the common stock concurrently with dividends on the preferred stock, for any dividend period of any fiscal year, when such dividends shall have been earned and are applicable to the common stock, provided that all accumulated dividends on the preferred stock for all previous fiscal years and previous dividend periods for that fiscal year shall have been paid in full and all sinking fund installments shall have been paid or set aside as hereinabove specified.

The foregoing provisions for a sinking fund and for the purchase, call and redemption of preferred stock shall be applicable until all of the preferred stock of this company shall have been redeemed; and the methods by the manner in which such provisions shall be exercised shall be determined from time to time by the board of directors, and such determination shall be final and conclusive. Preferred stock redeemed and discharged in accordance with the foregoing provisions shall not be reissued.

Form 315.

NEW YORK STEEL AND WIRE COMPANY.

Cumulative dividends, payable on dates fixed by by-laws—Preferred shares entitled to pro rata dividends with common after payment of fixed amount to common—Preferred as to capital and dividends on dissolution—Preferred shares not entitled to vote—Cumulative—Redemption clause.

Of said capital stock three thousand (3,000) shares shall be preferred stock, and three thousand (3,000) shares shall be general or common stock.

From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law.

The holders of said preferred stock shall be entitled to receive during each fiscal year out of the net earnings of the company preferential cumulative dividends at the rate of eight per centum (8%) per annum, payable yearly on the first day of April, or in half-yearly or quarterly installments, as the by-laws may from time to time provide.

After the payment of the said preferential cumulative dividend

of eight per centum (8%) for any fiscal year to the holders of the preferred stock any further amount declared in dividends for said year shall be paid to the holders of the common stock to the extent of eight per centum (8%) per annum, and should there be any further amount declared in dividends, the said further amount shall be divided pro rata among the holders of the preferred and common stock in accordance with their holdings; provided, however, that the board of directors of the company may in their discretion declare dividends during any fiscal year on the common stock, but no such dividend shall be declared on the common stock unless all cumulative dividends for previous years and all accrued installments, if any, for the current year, on the preferred stock shall have been set apart or paid.

From and after the first day of April, 1901, the dividends on said preferred stock shall be cumulative, so that, if in any year dividends amounting to eight per centum (8%) per annum shall not be paid on said preferred stock the deficiency shall be a charge upon the net earnings of the company until paid; but the board of directors may provide at the time of issue of any preferred stock that the dividends thereon shall be cumulative only from the time of such issue.

The holders of the preferred stock shall, in case of liquidation or dissolution of the company, be entitled to be paid in full the par value of their preferred shares, and the dividends accumulated and unpaid thereon, before any amount shall be paid to the holders of the common stock.

The holders of preferred stock shall have no voting powers whatsoever, nor shall they be entitled to notice of any meeting of stockholders of the company.

Said preferred stock shall be subject to redemption at two hundred dollars (\$200) per share and accumulated dividends thereon at any time after three years from the issue thereof, at such time or times and in such manner as the board of directors shall determine.

Form 316.

ROCK ISLAND COMPANY.

Non-cumulative dividends, payable quarterly on dates fixed by by-laws—Rate of dividend to increase at stated times—Preferred as to capital on dissolution—Preferred shareholders to elect class of directors.

The holders of the preferred stock shall be entitled to receive, when and as declared from the surplus or net profits of the corporation, non-cumulative yearly dividends at the rate of, but not

exceeding, four per centum per annum, for the year 1903, and for each and every year thereafter until and including the year 1909, at the rate of, but not exceeding, five per centum per annum for the year 1910, and for each and every year thereafter until and including the year 1916; and at the rate of, but not exceeding, six per centum per annum for the year 1917, and for each and every year thereafter; payable quarterly, on dates to be fixed by the by-laws, and in preference and priority to the payment of any dividend on the common stock for such year.

The holders of the common stock shall be entitled to receive all other net profits of the corporation which may be distributed as dividends, and such dividends on the common stock may be declared annually, semi-annually or quarterly as the board of directors may from time to time, in its discretion, determine.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par amount of their shares before any amount shall be paid to the holders of the common stock; and, after the payment to the holders of the preferred stock of its par value, the remaining assets and funds shall be divided and paid to the holders of the common stock pro rata according to their respective shares.

The holders of the preferred stock shall have the right, to the exclusion of the holders of the common stock, to choose directors of the first class, as defined in this certificate of incorporation, but such exclusive right may at any time be surrendered by the affirmative vote of the holders of two-thirds in amount of the preferred stock at the time outstanding, at a special meeting of the holders of the preferred stock called for that purpose, notice of which shall have been given in the manner prescribed at the time by the by-laws for a special meeting of the stockholders.

The common stock shall be subject to the prior rights of the preferred stock as declared in this certificate of incorporation.

Form 317.

ROYAL BAKING POWDER COMPANY.

Cumulative dividends, payable quarterly on fixed dates—Preferred as to capital and dividends on dissolution:

The capital stock shall be of two classes—preferred stock and common stock. Ten million dollars of the capital stock shall be preferred stock, but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property.

The power to fix the amount to be reserved as a working capital for the corporation is hereby given to the directors, and the rights to dividends from profits shall be subject thereto, but no such working capital shall be accumulated until all dividends due on the preferred stock shall be paid.

The preferred stock shall receive dividends at the rate of, and not exceeding, six per centum per annum. Such dividends shall be payable quarter-yearly on the first day of July, October, January and April, and the first dividend representing the four months beginning March first, eighteen hundred and ninety-nine, shall be for two per cent., and shall be payable July first, eighteen hundred and ninety-nine. Such dividends shall be cumulative, and if the profits in any one year declarable as dividends shall not be sufficient to pay such dividends for such year upon said preferred stock, the same shall be made up from profits of a later period until the full amount of dividends herein specified, without interest, shall have been paid upon the preferred stock before any dividend is declared on the common stock. The amount of such annual dividend on the preferred stock shall in each year be reserved for such payment before any dividend shall be set apart or paid on the common stock.

The balance of the net profits of the company declarable as dividends shall be distributed among the holders of the common stock. The face value of the preferred stock and accrued and unpaid dividends shall in the event of the dissolution of the company, and division of its assets, be paid in full before any sum whatever shall be paid on account of the common stock, and thereafter the common stock shall be entitled to the entire assets remaining.

Form 318.

STANDARD OIL COMPANY.

Cumulative dividends, payable quarterly—Preferred shares exchangeable for common:

Said preferred stock shall entitle the holder thereof to receive out of the net earnings a dividend of and not exceeding one and one-half per centum quarterly before any dividend shall be paid on the common stock. Common stock may, at the discretion of the company, be issued in exchange for preferred stock, and all preferred stock so received by the company shall be cancelled. Common stock may also be issued in payment for such property as the company has authority to purchase. Holders of preferred and of common stocks shall have like voting powers.

Form 319.

UNION BAG AND PAPER COMPANY.

**Cumulative dividends, payable quarterly, half-yearly or yearly—
Preferred as to capital and dividends on dissolution:**

The preferred stock shall have a preference over the common stock in respect to dividends to the amount of seven per centum per annum, payable quarterly, half-yearly or yearly, which shall be cumulative; that is to say, no dividend shall be paid upon the common stock until the preferred stock shall have received dividends at said rate from the time of issue thereof. The preferred stock shall also have a preference over the common stock in any distribution of the assets of the corporation other than profits until the full par value thereof and seven per centum per annum thereon from the time of issue shall have been paid by dividends or distribution. The preferred stock shall not be entitled to any dividend in excess of said seven per centum per annum, nor to any share in the distribution of assets in excess of said par value and the amount then unpaid of said cumulative dividends, but only the common stock shall be entitled to any further dividend, or to any further share in distribution.

Form 320.

UNITED CHURNING COMPANY.

**Cumulative dividends, payable on dates to be fixed by by-laws—
Preferred as to capital and dividends on dissolution:**

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation yearly dividends at the rate of seven per centum per annum, and no more, payable on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that if in any year dividends amounting to seven per cent. shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such accrued installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock payable then or thereafter, out of any remaining surplus or net profits,

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

Form 321.

UNITED STATES COTTON DUCK CORPORATION.

Cumulative dividends, payable semi-annually—Preferred as to capital and dividends on dissolution, with right to share in surplus after payment of par value of common shares:

The holders of preferred stock shall be entitled to receive in each year out of the surplus net profits of the corporation a fixed yearly dividend of six per centum, payable semi-annually, in January and July, if declared, before any dividend shall be set apart or paid on the common stock. The dividends upon the preferred stock shall be cumulative, so that if in or for any year dividends amounting to six per centum shall not be paid on the preferred stock, the deficiency shall be a charge upon the net earnings of the corporation, and be payable subsequently, before any dividend shall be set apart or paid upon the common stock. Dividends on the common stock also may be declared payable semi-annually, but only out of surplus net profits of the corporation for any fiscal year remaining after the payment of the full yearly dividend on the preferred stock for such year as well as of all dividends previously accrued and remaining unpaid thereon. The holders of preferred stock shall not be entitled to any further dividend or share of profits beyond the said cumulative yearly dividends of six per centum; and the holders of common stock shall be entitled to receive all moneys appropriated to dividends, after the cumulative dividends of six per centum on the preferred stock shall have been fully paid. In case of the liquidation or the dissolution of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par value of their shares and the accrued dividend charge before any amount shall be paid to the holders of the common stock. But, on any such liquidation or dissolution after the payment to the holders of the common stock of its par value, the remaining assets and funds shall be divided pro rata among the holders of both classes of said capital stock.

Form 322.

UNITED STATES RUBBER COMPANY.

Non-cumulative dividends, payable semi-annually—Preferred as to capital and dividends on dissolution:

The holders of the preferred stock shall be entitled to receive semi-annually all net earnings of the company determined and declared as dividends in each fiscal year up to, but not exceeding, eight per cent. per annum upon all outstanding preferred stock before any dividend shall be set apart or paid on the general stock; but such dividends upon the preferred stock shall not be cumulative, and the preferred stock shall not be entitled to participate in any other or additional earnings or profits. In case of liquidation or dissolution of the company, the holders of preferred stock shall be entitled to receive cash to the amount of their preferred stock at par before any payment in liquidation is made upon the general stock, and shall not thereafter participate in any of the property of the company or proceeds of liquidation.

Form 323.

UNITED STATES SHIPBUILDING COMPANY.

Non-cumulative dividends, payable quarterly on dates to be fixed by by-laws—Preferred as to capital and accrued dividends on dissolution.

The holders of the preferred stock shall be entitled to receive, when and as declared by the board of directors, out of the surplus or net profits, but only out of accumulated profits and not out of the profits of any subsequent year or years, non-cumulative dividends at the rate of, but not exceeding six per cent. (6%) per annum, payable in preference and priority to any payment of any dividend on the common stock for such fiscal year; the same to be payable quarterly or otherwise, as the directors may from time to time determine, on dates to be fixed by the by-laws. In addition thereto, in the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par amount of their shares, and of all unpaid dividends declared and accrued thereon, before any amount shall be paid to the holders of the common stock, and the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

The common stock shall be subject to the prior rights of the holders of the preferred stock, as herein declared. If, after the

payment of full dividends for any fiscal year on the preferred stock, or if, after a sum sufficient for the payment thereof shall have been set aside from the surplus or net profits of the company, there shall remain any surplus or net profits of such year, any and all such surplus or net profits of such year, and of any other fiscal year for which full dividends shall have been paid on the preferred stock, shall be applicable to dividends upon the common stock; and out of any such surplus or net profits the board of directors may in their discretion declare and pay dividends upon the common stock of the corporation upon any of the dividend dates fixed as aforesaid, but not until after the dividend upon the preferred stock for the current fiscal year shall have been actually paid or provided for and set apart.

Form 324.

UNITED STATES STEEL CORPORATION.

Cumulative dividends, payable quarterly on dates to be fixed by by-laws—Preferred as to capital and dividends on dissolution.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent. shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years, and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares, and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred

stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

Form 325.

WESTERN TELEPHONE AND TELEGRAPH COMPANY.

Cumulative from certain day in future, payable semi-annually on dates to be fixed by by-laws—Preferred as to capital and dividends on dissolution.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends, at the rate of six per centum per annum, and no more, payable semi-annually, on dates to be fixed by the by-laws.

Prior to the second day of February, 1904, the dividends on the preferred stock shall not be cumulative; but until that date, no dividend shall be paid or set apart on the common stock in any year until a dividend at the rate of six per centum per annum in such year shall have been set apart or paid upon the preferred stock. Commencing with the second day of February, 1904, dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart, so that if in any year dividends amounting to six per centum per annum shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock.

Whenever the cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued semi-annual installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years, and such accrued semi-annual installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may forthwith, without waiting for the expiration of the current year, declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up of the corporation (whether voluntary or involuntary), the holders of the preferred stock shall be entitled to be paid in full both the par value of their shares and the unpaid cumulative dividends thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the pre-

ferred stock of its par value, and of unpaid accrued cumulative dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective rights.

Form 326.

WHITE MOUNTAIN PAPER COMPANY.

Non-cumulative dividends until fixed date after which dividends are cumulative—Preferred as to capital and dividends on dissolution:

Said preferred stock shall entitle the holder to receive in each year when and as declared out of the surplus or net profits of the corporation a fixed yearly dividend of seven per centum (7%) and no more before any dividends shall be paid upon or set apart for said general or common stock.

Such dividends on the preferred stock shall be payable quarterly, half-yearly or yearly and on dates to be fixed by the by-laws of the company.

Such dividends shall be non-cumulative until the first day of January in the year one thousand nine hundred and three, after which date the dividends on the preferred stock shall be cumulative; so that if in any year after said date dividends amounting to seven per centum (7%) shall not be paid upon or set apart for such preferred stock, the deficiency shall be a charge upon the net earnings, and be payable subsequently before any dividends shall be paid upon or set apart for the general or common stock.

After all dividends on the preferred stock for all previous years accrued and all the installments thereof for the current year shall have been paid, or the company shall have set apart from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends, payable on dates to be fixed in the by-laws, on the common stock, payable then or thereafter out of any remaining surplus or net profits. The holders of the preferred stock shall in case of liquidation or dissolution of the corporation, be entitled to be paid in full an amount equal to both the par value of their shares and the accrued dividends unpaid thereon before any amount shall be paid to the holders of the general or common stock.

Equal voting powers shall attach to the shares of both preferred and common stock.

MISCELLANEOUS CAPITAL STOCK CLAUSES.

Form 327.

Power taken to issue additional shares in future to provide for conversion of bonds—Shareholders may form voting trusts:

Except as otherwise herein provided, the total authorized capital stock of the corporation is thirty-two million five hundred thousand dollars (\$32,500,000), divided into three hundred and twenty-five thousand (325,000) shares of the par value of one hundred dollars (\$100) each.

In addition to said \$32,500,000 capital stock, the corporation may, on or prior to October 1st, 1912, issue from time to time, without any further action or authorization of its stockholders, not to exceed an additional sixteen million dollars (\$16,000,000) of capital stock divided into one hundred and sixty thousand (160,000) shares of the par value of one hundred dollars (\$100) each, for the purpose of enabling the corporation to convert at par at the option of the holder or holders of the hereinafter mentioned bonds, all or any part of an issue of sixteen million dollars (\$16,000,000) 5% convertible gold bonds, payable 25 years after October 1, 1902, which the corporation proposes to issue. The method of conversion of the same into stock of the corporation shall be fixed and determined by the board of directors.

The amount of capital stock with which the corporation will commence business is three thousand dollars (\$3,000).

The holders of all or any part of the shares of the capital stock of the corporation shall have the right from time to time at their discretion to create and form a voting trust.

(From the charter of the Distillers Securities Corporation.)

[As to voting trusts see note to Section 36.]

Form 328.

Power taken to issue preferred stock at future time to redeem bonds:

The corporation shall have power, at any time, to create and issue seven per cent. cumulative preferred stock to the aggregate amount, at par, of one million dollars; provided, however, that such preferred stock shall only be issued for the purpose of redeeming and retiring therewith, dollar for dollar, the debenture bonds of the corporation; and provided, further, that at no time shall the total amount of the preferred stock issued and outstanding exceed two-thirds of the entire capital stock of the corporation.

In case the corporation shall, at any time, create and issue preferred stock, the holders of such preferred stock shall be entitled

to cumulative dividends thereon, at the rate of seven per centum for each and every fiscal year of the company, and no more, payable out of any and all surplus or net profits, quarterly, half-yearly or yearly, when declared by the board of directors; and in addition thereto, in the event of the dissolution or liquidation of the corporation or a sale of all its assets, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares and all accumulated dividends out of the assets of the corporation before anything shall be paid therefrom to the holders of the common stock; and after such payment to the holders of the preferred stock, the holders of the common stock shall be entitled to receive all of the remaining assets of the company.

After providing for the payment of all accumulated dividends upon the preferred stock, at the rate of seven per centum for each and every fiscal year of the company, the directors may, in their discretion, whenever the remaining surplus or net profits are applicable thereto, declare and pay dividends therefrom upon the common stock.

(From the certificate of incorporation of Flint & Co.)

Form 329.

Preferred shares to be exchangeable for common at option of holder

—Subject to redemption at fixed price:

Each and every holder of the preferred stock shall be entitled at any time, excepting when the books of the corporation are closed for the payment of dividends, to deliver to the company, properly indorsed, his certificate for preferred stock, and receive in lieu thereof common stock, share for share, and thereupon such certificate or certificates of preferred stock shall be retired and cancelled and never again reissued, and thereupon such preferred stock, the certificate for which is so received and cancelled, shall become and thereafter remain common stock. All or any of said preferred stock, not so exchanged, shall be subject at any time to redemption by the corporation at par and twenty-five per centum in addition thereto. At the time of any such redemption the holder of preferred stock so redeemed shall have the right to waive said one hundred and twenty-five per centum in cash, and demand that the corporation issue to him, in lieu of said preferred stock so redeemed, common stock, share for share.

The corporation agrees to take hereafter from time to time such further proceedings, if any, as may be necessary to carry out these provisions relative to the transformation of the preferred into common stock.

Form 330.**Deferred stock debentures:**

Upon the vote of a majority of the preferred and common stock issued and outstanding, irrespective of class, the directors shall have the power to create deferred stock debentures which shall be subordinate to the common and preferred stock, both as to dividends and the principal, so that the said deferred stock debentures shall not be entitled to any dividend or interest whatever until after both preferred and common stock shall have in any one year received, or had set apart for payment, a dividend at the rate of six per cent. per annum, and after the payment of a dividend of six per cent. in any year to the stock, preferred and common, a dividend at the rate of but not exceeding six per cent. shall be paid to the holders of the said deferred stock debentures, but they shall not be entitled in any one year to any further dividend or interest. In the event of liquidation or dissolution of the company, the common and preferred stock shall be paid in full before any payment shall be made upon the said deferred stock debentures. Said deferred stock debentures shall have no voting power. The deferred stock debentures shall always be subordinate also to the claims of general creditors of the company.

Form 331.**Founders' shares:**

The total amount of the authorized capital stock of this company, which is _____ dollars, consisting of _____ shares of the par value of one hundred dollars (\$100) each, shall be divided and classified as follows: Of the said stock, _____ dollars shall be ordinary or common shares, and the balance, viz., _____ dollars, are to be called "founders' shares," and are to confer on the holders thereof, ratably and in proportion to the number of founders' shares held by them respectively, the rights following, that is to say:

The right to one-fourth the surplus profits of the company of each year which shall remain after paying or providing for the payment out of such profits of a dividend for each share at the rate of six per cent. per annum on the whole capital, including both classes, issued and outstanding, and paid up, and after making due provisions for the reserve or surplus fund in accordance with the provisions hereinafter set forth.

The right to one-fourth of any part of the reserve fund aforesaid or the income thereof which it may at any time be determined to divide among all the stockholders.

The right to one-fourth of the surplus assets which in the winding up of the affairs of the company shall remain after paying off the whole of the paid-up capital.

Any of the shares of the capital, original or increased, may, pursuant to the statutes of New Jersey, be issued with any preferential, special or qualified rights or conditions as regards capital, voting or otherwise, attached thereto, with the consent of the holders of two-thirds of the said founders' shares issued and outstanding and not otherwise, and always so that the rights hereby attached to the founders' shares shall not be infringed.

The directors shall from time to time set aside the percentage on the surplus profits in that behalf mentioned in the next clause hereinafter contained as a reserve or surplus fund to meet liability or contingencies, or as working capital or for such other purpose as the directors shall in their absolute discretion think conducive to the interests of the company.

The profits of each year shall be applicable as follows:

(a) Of the profits, fifty per cent., each year to be carried to the reserve fund, together with a sum additional, if any, as the directors shall think proper (with the consent in writing of the holders of two-thirds of the founders' shares), which reserve fund may in the absolute discretion of the directors be applied to the purchase and acquisition of property real and personal, and to the purchase and acquisition of its own capital stock, and may take said capital stock in payment or satisfaction of any debt due the company from time to time and to such extent and in such manner and upon such terms as its board of directors shall determine, and it may reissue said stock so acquired.

Neither said surplus fund nor the property, nor the capital stock so purchased and acquired, nor any of its capital taken in payment or satisfaction of any debt due to the company, shall be regarded as profits for the purpose of the declaration or payment of dividends unless a majority of the board of directors, or the holders of a majority of all the stock then issued and outstanding, shall otherwise determine.

The unused balance of said reserve fund shall, after the close of each year, be retained in said reserve fund until such reserve fund shall be equal to the capital stock for the time being paid up and outstanding.

(b) To the payment of dividend or dividends to the close of such year on all the stock of the company of both classes issued and outstanding, as hereinbefore provided.

There shall be seven directors of the company, divided into two classes in respect to the time for which they shall severally hold office.

The first class, composed of four members, shall be chosen

exclusively by the holders of the founders' shares for the time being, and shall hold their offices for the term of two years, and until the election of their successors, and the second class, composed of three members, shall be chosen exclusively by the holders of the general or common stock for the time being, and shall hold their offices for the term of one year and until the election of their successors. The successors of the directors of said two classes respectively shall be chosen by the holders of the founders' shares and by the holders of the general or common shares as aforesaid, so that four of the directors shall at all times be chosen by the holders of the founders' shares and three of the directors be chosen by the holders of the general or common shares.

(Sargent Automatic Railway Signal Co.)

[For additional stock preference clause, see the charter of the United States Steel Corporation, Form 13, p. 258.]

CLAUSES REGULATING BUSINESS, ETC.

The certificate of incorporation may contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders.

(Section 8, subdiv. VII, p. 35, ante.) These clauses may be greatly varied.

The precedents that follow are the clauses more commonly used.

Form 332.

Preference shares reserving to the corporation rights of modification:

The corporation is authorized to issue capital stock to the extent of
 dollars (\$) , divided into shares of the
 par value of dollars
 (\$) each.

Of said capital stock
 shares shall be preference shares, and the balance shares
 shall be common shares. Such preference shares shall confer the
 right to a fixed cumulative preferential dividend, at the rate of
 per cent. per annum from and after the day
 of , 19 , payable yearly, half-yearly or quarterly
 before any dividend shall be set apart or paid on the common shares.

The preference shares shall rank, both as regards such dividends and as to capital, in priority to the common shares, but shall not confer the right to any further participation in profits or assets.

Subject as aforesaid, and to due and proper provision, in the discretion of the board of directors for a depreciation of the company's properties, and to the setting aside of any part of the net profits for a reserve fund, and other matters and contingencies in connection with the company's business, as may be determined upon by the board of directors in their absolute discretion, the profits of the company, as and when declared as dividends, and in case of dissolution, any surplus assets after the repayment of the capital and accumulated dividends, if any, shall be divided among the holders of the common shares in proportion to the common shares held by them respectively.

In furtherance and not in limitation of the powers conferred upon the company by Sec. 27 of "An Act Concerning Corporations (Revision of 1896)" for the alteration or amendment of the certificate of incorporation, the company is further authorized from time to time to increase or reduce its capital, to issue any shares in the original or increased amount as preferred or common, and may attach to any class or classes of such shares any preferential, special or qualified rights or conditions, or may subject the same to any restrictions or limitations, provided always that the rights and privileges of the various classes into which the capital of the company is or may be divided, shall be modified or varied only in the manner provided by the aforesaid Sec. 27 of "An Act Concerning Corporations (Revision of 1896)."

All or any of the rights and privileges attached to the preferred and common stock respectively may be modified by a certificate of amendment authorized and filed in the manner provided by Sec. 27 of "An Act Concerning Corporations (Revision of 1896)," for the alteration or amendment of the certificate of incorporation.

MODIFICATION OF STOCKHOLDERS' RIGHTS.

Note.—The foregoing and similar precedents are used where it is desired to reserve to the stockholders the power to modify the rights of the stockholders of different classes, and to enable the corporation to make such changes and modifications in the manner provided by Sec. 27, p. 100; see also p. 36 note, and forms, 373, 374.

The insertion of this or any similar provision in the certificate of incorporation, and the making such provision a part of the fundamental contract between the stockholders puts the minority in a less favorable position to unreasonably object to the plans of a concurring majority.

(See note at p. 36 on Modification of Stockholders' Rights.)

Form 333.**Classification of directors:**

The directors shall be divided as equally as may be into five classes. The seats of the directors of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; of the fourth class, at the expiration of the fourth year, and of the fifth class, at the expiration of the fifth year, so that one-fifth may be chosen every year.

Form 334.**Classification of directors:**

The directors of said corporation shall be classified, in respect to the time for which they shall severally hold office, into five classes. The first class shall be elected for a term of five years; the second class shall be elected for a term of four years; the third class shall be elected for a term of three years; the fourth class shall be elected for a term of two years; the fifth class shall be elected for a term of one year; and at each annual election after the first, the successors to the class of directors whose terms expire in that year shall be elected to hold office for the term of five years, so that the term of office of at least one class shall expire in each year.

Form 335.**Classification of directors:**

The total number of directors shall be divided into three classes, each consisting of such number of members as may from time to time be fixed by the directors. The members of one class only shall retire each year, but no retirement of any class shall take place before the annual meeting in _____, 19____, and the successors of those retiring shall be chosen at the annual meeting of stockholders.

The board of directors first chosen shall decide as to the rotation or order of retirement of said classes, and thereafter the order so fixed shall be kept so that after the annual meeting in _____, 19____, each class shall continue in office for three years from its appointment unless the stockholders at any annual meeting shall otherwise determine.

[For other forms of clauses classifying directors, see the charters of the United States Steel Corporation and the Northern Securities Company, Forms 13 and 15, post.]

Form 336.**Powers of directors:**

All corporate powers shall be exercised by the board of directors, except as otherwise provided by the statute or by this certificate.

Form 337.**Powers of directors:**

Among all other powers which by law may be exercised by the board of directors, the board shall, subject to the provisions of the said act entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and to any orders and regulations that may from time to time be made by the shareholders, have full power with respect to the following:

- (a) The making of contracts on behalf of the corporation.
- (b) The allotment of stock, and the making of calls thereon; the forfeiture of stock for non-payment of calls; the disposal of forfeited stock and the proceeds thereof; certificates of stock, and the declaration and payment of dividends.
- (c) The number of directors, their term of service and the amount of their stock qualification; the quorum; and the times and places for meetings, and the calling of meetings.
- (d) The appointment, functions, duties, remuneration and removal of all agents, officers and servants of the corporation, and the security (if any) to be given by them to the corporation.
- (e) The times and places for holding the annual and special meetings of the shareholders; the calling of meetings and the requirements as to proxies.
- (f) The conduct and management generally of the affairs and business of the corporation, and the doing of any act and the exercise of any power which by this certificate of incorporation or by law the corporation is empowered to do or exercise.

Provided, always, that no mortgage of or charge on the real estate or fixed plant of the company shall be made or given by the board unless under the authority of a resolution of shareholders duly passed at an annual general meeting or at a special meeting called for the purpose, and on such questions the holders of preferred stock shall be entitled to the same voting powers as belong to the common stock, but this proviso shall not limit the power of the board to make or give a mortgage or charge securing unpaid purchase money for such real estate or fixed plant.

The board of directors shall have power, without the assent or vote of the shareholders, to make, amend or repeal the by-laws of the corporation, except as to the last preceding proviso; but the

shareholders may, at a special meeting called for the purpose, by the vote of at least two-thirds in interest of those present or duly represented and entitled to vote and voting, amend or repeal any by-law passed by the directors, and the action of the shareholders so taken shall not be subsequently changed by the board unless under the authority of a resolution of the shareholders passed by a similar vote at a special meeting called for the purpose.

No orders or regulations made by the shareholders as above provided for shall invalidate any of the provisions of this certificate of incorporation or any prior acts of the board of directors or executive committee, which would have been valid if such orders or regulations had not been made.

Form 338.

Directors may act without meeting:

The board of directors or the executive committee shall have power to act in the following manner:

Any resolution in writing signed by all the members of the board of directors or executive committee shall be and constitute action by such board or executive committee, as the case may be, to the effect therein expressed, with the same force and effect as if the same had been duly passed by the same vote at a duly called meeting of such bodies respectively, and it shall be the duty of the secretary of the company to place such resolution so signed in the minute book of the company under its proper date.

[A clause such as this is sometimes found to be useful when the directors are scattered, and it is not practicable to obtain a quorum. The validity of such a provision has not been passed upon by the courts.]

Form 339.

Directors empowered to sell business as an entirety:

The board of directors shall have power and authority to sell, assign, transfer, convey or otherwise dispose of the property and assets of the corporation as an entirety or going concern, on such terms and conditions as the board of directors shall deem fit, right and just, whether for cash or for securities of one or more corporations.

Form 340.

Directors to sell property on request of majority of stockholders:

The directors shall at any time sell or dispose of all or any part of the real estate, personal property or other assets of any

kind or nature, that may be owned by the company, on the request of a majority of all the stockholders, preferred and common, to be evidenced by a vote at a meeting called on two weeks' notice, or by a writing under the signature of a majority of said stockholders. Said sale shall be made for cash or in exchange for other property as may be directed by said stockholders.

Form 341.

Power to directors to make and alter by-laws:

The board of directors shall have power, without the assent or vote of the stockholders, to make, alter, amend and repeal by-laws for the corporation, but the by-laws shall always provide for notice of the objects of any special meeting of stockholders; to fix the amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens upon the property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any or all of its property, but no sale of all its property shall be made except upon the vote of the holders of a majority of stock.

[See §11, p. 48, ante.]

Form 342.

Specific authority to directors to issue bonds:

The directors and officers of the said company are authorized to issue fifteen thousand (15,000) first mortgage bonds of one thousand dollars (\$1,000) each, payable on the day of , in the year 19 , in gold, bearing six per cent. interest, payable likewise in gold semi-annually at the agency of the company in the City of New York, and to secure said bonds by a conveyance by way of mortgage of all the franchises belonging to the company, and such part of its property, real and personal, as the directors may deem advisable. This authority is not to be construed as a limitation against the issue of other bonds secured or unsecured by mortgage.

Form 343.

Power to appoint vice-president, etc.:

The board of directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws the persons

so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

[There is no express provision in the act for the appointment of a vice-president, an assistant secretary or an assistant treasurer. The above clause may, therefore, have some utility when a vice-president or assistant officer is to perform some duty imposed by statute on the president, secretary or treasurer, as the case may be.]

Form 344.

Dividend clause:

Dividends may be declared and paid at such times as may be determined by the board of directors, and the provisions of Section 47 of said "Act Concerning Corporations (Revision of 1896)," as amended, shall not apply to this corporation.

[See notes to Section 47, p. 149, ante.]

Form 345.

Power to directors to reserve working capital and fix time of declaring dividends:

The directors of the corporation are hereby given the power to fix and determine from time to time and to vary the sum to be reserved, over and above its capital stock paid in, as a working capital, before declaring any dividends among its stockholders, and to fix the time of declaring and paying any dividend, and the amount of any dividend shall be determined by the directors, unless otherwise provided by the by-laws of the corporation, and to direct and determine the use and disposition of any surplus or net profits or earnings, over and above the capital stock paid in. All sums so reserved may be applied from time to time to the acquisition of property as the directors shall from time to time determine, and neither the property so acquired nor any of its capital stock held by the corporation, shall be regarded as accumulated profits, for the purpose of declaration or payment of dividends, unless otherwise determined by the directors.

Form 346.

Power to directors to fix working capital, etc.:

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation, to determine whether any, and, if any, what

part of any, accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

Form 347.

Limitation on power to create mortgages:

No mortgage shall be created by the company unless there shall be first obtained the consent in writing of the holders of seventy-five per cent. of the preferred stock outstanding at the time, and also the like consent of holders of seventy-five per cent. of the outstanding common stock.

Form 348.

Limitation on power to create mortgages:

The corporation shall not issue bonds or execute any pledge or mortgage or chattel mortgage upon its property or franchises without the consent of the stockholders owning at least ninety per cent. of the preferred stock of the corporation, which consent shall either be in writing and be filed in the office of the corporation, or shall be given by a vote at a stockholders' meeting called for the purpose.

Form 349.

Limitation on power to create mortgages:

That the company may create and issue its debentures to the amount of ten million dollars, and no bond or debenture other than those above mentioned, and no mortgage shall be made, assumed or guaranteed by the company, or by any company, a majority of the capital stock of which may be owned or controlled by this company without the consent of the holders of record of eighty per centum of the preferred stock of this company then outstanding.

Form 350.**Limitation on power to create mortgages:**

The corporation shall not have power to mortgage its real property or any part thereof, nor to create any lien, by way of mortgage or otherwise, upon its plant and machinery used in its business of manufacturing, except upon the assent in writing first obtained of the holders of two-thirds of the entire capital stock issued and outstanding, or upon the affirmative vote of the holders of a majority of the entire capital stock, issued and outstanding, at a meeting of the stockholders duly called for that purpose. Upon such assent so obtained, or upon such affirmative vote so had, and not otherwise, the directors shall have power to mortgage the said real property, plant and machinery of the corporation, or any part thereof, to secure an issue of bonds or otherwise.

Form 351.**Restriction on creation of mortgages, etc.:**

To authorize and cause to be executed mortgages, liens and bonds, secured or not secured, upon the real and personal or other property of the company, or any part thereof, provided (a) that a majority of the whole board of directors concur therein by resolution or in writing, and (b) that the aggregate amount to be secured by such mortgages, liens and bonds at any one time shall not exceed one-fifth of the issued capital stock of the company for the time being, and (c) that no bond or debenture issue, nor other security covering the whole of the assets of the company shall be issued without the previous sanction of a resolution passed by the holders of at least one-half of the outstanding shares of the company at an annual meeting or at a special meeting of stockholders called for that purpose.

Form 352.**Executive committee:**

The board of directors, by resolution passed by a majority of the whole board, may designate three directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have and may exercise the power of the board of directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

[See p. 59, ante.]

Form 353.

Executive committee:

There shall be an executive committee of _____ members, who shall be elected by the stockholders from the directors, and hold office as hereinafter provided. The said committee shall have and exercise all the powers expressly conferred upon it by this certificate of incorporation, and also all the powers of the board of directors whenever a quorum shall fail to be present at any stated or other meeting of the board, and as well at all times whenever the board shall not be in session, and shall have power to affix the seal of the corporation to all papers which they may deem to require it.

The committee shall have power to make rules and regulations for the conduct of its business, and to determine how many members thereof shall constitute a quorum.

The officers of the committee shall be a chairman, a vice-chairman and a secretary, who shall hold office during the term of their office as members of the committee, and shall be elected by the stockholders.

At all meetings of the committee all questions shall be decided by a majority of votes, and in case of an equality of votes, the chairman, and in his absence the vice-chairman, and in the absence of both, the secretary shall have a second and deciding vote.

The stockholders shall, at their first meeting, elect by ballot the said committee of _____ members from the directors elected at such meeting, and the said officers thereof.

The stockholders shall determine and fix the compensation to be paid to the members of the committee and to any of the officers thereof as such, and the compensation of any member or officer of the committee, so fixed, shall not be diminished during his tenure.

At every annual meeting after the first meeting, whenever the term of office of any member or officer of the committee shall expire, the stockholders may elect a successor. Any member of the committee may be elected to succeed himself.

Any director, irrespective of class, is eligible to election as a member of the executive committee.

The term of office of each member of the committee shall be coextensive with the term of his office as director, unless the stockholders at the time of his election shall fix a shorter period or term of office, which they shall have power to do. Any member of the committee who shall cease to be a director of the company shall ipso facto cease to be a member of the committee.

Neither the directors nor the members of the executive committee nor the president nor vice-president shall be subject to re-

moval during their respective terms of office, nor shall their term of office be diminished during their tenure.

All vacancies in the executive committee shall be filled for the unexpired term from the directors by the remaining members of the committee.

[For other clauses relating to executive committee, see Forms 12 and 13.]

Form 354.

Directors and officers not subject to removal:

Neither the directors nor the members of the executive committee nor the president or vice-president shall be subject to removal during their respective terms of office, by the stockholders or otherwise, nor shall their terms of office be diminished during their tenure.

[See p. 69.]

Form 355.

Removal of officers:

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employee of the corporation may be removed at any time by vote of the board of directors, or by any committee or superior officer, upon whom such power of removal may be conferred by the by-laws, or by vote of the board of directors.

Form 356.

Removal of directors:

By the written direction, or pursuant to the affirmative vote in person or by proxy of the holders of two-thirds of the capital stock of the company, any director or directors may be removed at any time with or without cause. Only stockholders shall be eligible as directors, and if a director ceases for any reason to be a stockholder, he shall cease ipso facto to be a director, and his office shall thereupon become vacant. In case of any vacancy in the board of directors through death, resignation, disqualification, removal, or any other cause, the vacancy or vacancies shall be filled by the stockholders.

Form 357.**Fixing of salaries of officers:**

The elective officers of the corporation shall be paid only such salaries as shall be fixed and determined by the vote of at least two-thirds of the company's outstanding stock at any special or regular meeting, but the salaries as so fixed may be increased or diminished at any time by majority vote of the executive committee. No elective officer shall, without assenting vote of at least two-thirds of the company's outstanding stock, receive any compensation for services rendered or to be rendered other than the salary attaching to the office, as such salary shall be fixed as herein provided for.

Form 358.**Limitation on liability of original subscribers:**

The subscribers hereto, and each other subscriber for the stock of the company, shall at all times be liable for the purchase price of the stock for which he subscribed until ten per cent. of the par value thereof has been paid thereon, but after the payment of said ten per cent. the subscriber shall no longer be liable for any unpaid part of his subscription excepting upon such shares as shall stand of record on the books of the company in the subscriber's name at the time a call or assessment is made; but the holders of such shares of record on the books of the company, and they only, shall be liable for the same.

Form 359.**Lien on stock for indebtedness due company:**

The corporation shall have a first lien on all the shares of preferred stock of the registered holder thereof, and on all dividends declared thereon, for any and all indebtedness of such stockholder to the corporation, whether secured or unsecured, whether due and payable or not due and payable at the time when the corporation shall seek to enforce such lien, and whether such indebtedness to the corporation accrued before or after such stockholder became a stockholder of the company, and such lien shall continue until such indebtedness shall be paid in full, and such stock shall not be transferred on the corporation's books until such indebtedness shall be paid in full.

Form 360.**Rights of shareholders on increase of capital stock:**

The board of directors may, before the issue of any new shares of the capital stock, determine that the same, or any part thereof, shall be offered in the first instance to all of the then shareholders in proportion to the amount of the capital stock held by them, or make any other provision as to the issue and allotment of the new shares; but in default of any such determination, or so far as the same shall not extend, the new shares may be dealt with as if they formed part of the shares in the original capital stock of the company.

[See note on p. 103, ante.]

Form 361.**Limitation on amount of dividends:**

No dividends upon the capital stock of the company in excess of ten per cent. upon the entire amount thereof at any time outstanding shall at any time be declared except upon the written consent of the holders of record of a majority of the stock at such time outstanding, and not more than one such dividend of ten per cent. shall be declared in any one year except upon such written consent.

Form 362.**Clause fixing time when dividends shall become cumulative:**

Such dividends shall be non-cumulative until the first day of _____ in the year one thousand nine hundred and _____, after which date the dividends on the preferred stock shall be cumulative.

[In the case of a new business, a clause of this kind is advisable, in order that the company may not be burdened with arrears of dividends when it reaches the earning period.]

Form 363.**Restriction as to issue of additional capital stock:**

After stock of the company to the amount of \$50,000,000, being \$5,000,000 of preferred stock and \$45,000,000 of common stock, shall have been issued and sold, no further or additional stock shall be sold or issued, save as authorized by a vote of two-thirds of the

holders of each class of stock, common and preferred, voting separately, and by vote of three-fourths of the board of directors.

[A clause of this kind is used where the authorized capital stock is made larger than is immediately required, and when it is desired to limit the powers of the directors with respect to the issue of the additional capital.]

Form 364.

Examination of books by stockholders:

The board of directors from time to time shall determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the board of directors, or by a resolution of the stockholders.

Form 365.

Limitation on right of stockholders to examine books:

No stockholder or stockholders holding less than forty per cent. of the total stock issued shall be entitled to an examination of the books of account or documents, or papers, or vouchers of this company, except by a resolution of the board of directors giving such privilege, and an examination shall then be had only at the time and place, in the manner, to the extent and by the person named in such resolution of the board of directors, excepting always from this restriction such corporate records as are, by statute, open to the inspection of stockholders.

This restriction shall not be construed to limit the right or power of any director or officer of the corporation to examine the books, papers, or vouchers of the said corporation.

Form 366.

Private publicity clause:

The board of directors shall cause true accounts to be kept of the assets of the company, of all sums of money received and expended by the company, and of the matter in respect of which such receipt or expenditure takes place, and of the credits and liabilities of the company, and of all matters necessary for showing

the true state and condition of the company, and the accounts shall be kept in such books and in such manner and the books of account shall be kept in such place or places within or without the State of New Jersey as the board think fit.

The directors shall, once at least in each year, and at intervals of not more than thirteen months, cause the accounts of the company to be balanced, and a stockholders' balance sheet to be prepared, and shall cause a copy of such stockholders' balance sheet to be laid before the stockholders at the annual meeting, and any stockholder shall thereafter be entitled to a copy of such balance sheet on application to the treasurer.

The stockholders' balance sheet shall be in such form as may be from time to time directed by the stockholders, but if the stockholders at the annual meeting shall not so direct, then in such form as the directors may from time to time determine, but such stockholders' balance sheet shall in every case contain:

(1) The amount of the stock issued and outstanding of each class, distinguishing the amount of capital paid up in money and the amount paid up otherwise than in money.

(2) The amount of debts due by the company, distinguishing the amount secured by mortgage and other liens upon the assets of the company.

(3) The amount of debts due the company after making proper reduction for debts considered to be bad or doubtful.

(4) The actual amount of repairs.

(5) The amount by which the gross value of the assets of the company has been increased since the last balance sheet in consequence of any increase in the valuations of real or personal property belonging to the company.

Form 367.

Cumulative voting:

At all elections of directors, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for or any two or more of them as he may see fit.

[See §35a, p. 122.]

Form 368.

Cumulative voting:

The by-laws shall provide that at all elections of directors each stockholder shall be entitled to as many votes as shall equal the

number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or distribute them among the number to be voted for, or any two or more of them, as he may see fit.

[See §35a, p. 122.]

Form 369.

Substitute for clause authorized by §17 as amended in 1901:

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the "Act Concerning Corporations (Revision of 1896)," any action which theretofore required the consent of the holder of two-thirds of the stock at any meeting, after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

[See §17, p. 73, ante.]

[Note.—As pointed out in the note to §17 pp. 73, 74, ante, the above clause probably does not apply to amendment of the certificate of incorporation, increase and decrease of the capital stock, and the other matters provided for by §27. If it is desired to cover those matters, Form 370 is preferable, and, while it does not in language conform strictly to the provisions of the statute, its validity might be sustained if inserted in the original certificate of incorporation (see sub-division VII of §8). It might operate by way of estoppel against the stockholders. In the face of such a charter provision a court of equity would be less inclined to restrain by injunction proposed action or to set aside the completed action.]

Form 370.

Substitute for clause authorized by §17 as amended in 1901:

Any action which, by the provisions of any statute of New Jersey, requires the consent of the holders of two-thirds of all the outstanding capital stock or of two-thirds in interest of each class of the outstanding capital stock having voting powers, at any meeting of the stockholders, after notice to them given, or requires their consent in writing to be filed, may be taken by this corporation upon the consent of and the consent given and filed by the holders of two-thirds of the capital stock of each class represented at such meeting in person or by proxy.

Form 371.**Limitation on voting power of common stock:**

At all meetings of the stockholders, and at all elections for directors, each holder of preferred stock shall be entitled to one vote for each share of preferred stock held by him and registered on the books of the company as provided by the by-laws, and each holder of common stock shall be entitled to one vote for each five shares of common stock so held and registered; no holder of less than five shares of common stock shall be entitled to any vote whatsoever.

Form 372.**Limitations on voting power of preferred stock:**

[The following provisions are taken from the certificate of incorporation of the Royal Baking Powder Co., and illustrate the great latitude which incorporators are allowed in regulating the internal affairs of the corporation. The obvious purpose here was to put safeguards around the preferred stock and to insure the payment of dividends, if earned.]

So long as the dividends reserved on said preferred stock shall be paid as and when the same are by this instrument provided to be paid, the holders of the preferred stock shall have no voting power on any question. In the event, however, that any dividend due on the preferred stock shall not be paid when payable hereunder and shall remain so unpaid for a period of four months, then a special meeting of the stockholders of the company shall be called at the request of any preferred stockholder or stockholders owning preferred stock of the par value of fifty thousand dollars (\$50,000), which meeting shall be convened on ten days' notice by mailing a copy of such notice to each preferred stockholder of record at the time such notice is mailed, to his address as the same appears at the time upon the preferred stock ledger hereinbelow mentioned, and at such meeting, if said dividend still remain unpaid, the holders of a majority of the preferred stock, present or represented at said meeting, shall be entitled to elect a new board of directors of the company, and the voting power theretofore vested exclusively in the common stock of the company shall for the time being wholly cease.

The election of the new board of directors in the manner hereinabove specified shall terminate the term of office of each member of the existing board of directors elected by the common stockholders. Thereafter and until all arrearages of dividends shall have been paid, or accumulated as hereinafter provided upon the preferred stock, the voting power theretofore vested exclusively in the com-

mon stock shall vest and remain in the holders of the preferred stock. One month after the payment of all defaulted dividends upon the preferred stock or the accumulation of net earnings equal to said defaulted dividends, the voting power then vested exclusively in the preferred stock shall cease, and such exclusive voting power shall be restored to the holders of the common stock and a new board of directors may be elected by such exclusive vote of the common stock, at a meeting duly called and held as above provided, concerning any meeting following a default in the payment of dividends on the preferred stock, save only that notice thereof shall be given alone to the holders of the common stock, and, such meeting being held and such new board being elected, the term of office of each director elected by the vote of the preferred stock shall at once expire.

At the end of each fiscal year the company shall cause a full audit of its accounts to be made by some certified public accountant, which audit shall at all times be open to the inspection of all holders of the preferred stock of the company.

During any period of time that the corporation shall be managed by a board of directors elected by the preferred stockholders, the books of account showing the business and earnings of the said corporation shall be open at all reasonable times, not oftener than once in three months, to the inspection and examination of the owners of a majority of the common stock.

The by-laws of the corporation shall contain provisions consistent with the foregoing, and the portion of said by-laws so providing shall not be subject to amendment or change, save by the assent in writing of at least two-thirds of all the outstanding shares of the preferred stock and also by the vote of at least two-thirds of all outstanding shares of the common stock of the company.

A preferred stock ledger shall be kept by the company at its principal office, setting forth the names and post office addresses of the preferred stockholders respectively, and the number of shares of preferred stock held by each, and each transfer of preferred stock of the company and like information as to each transferee shall from time to time be entered upon such ledger, which shall be at all reasonable times open to the inspection of any owner of said preferred stock.

No mortgage shall be created or assumed by the company, nor shall any class of its capital stock now or hereafter existing other than its common stock, be increased, nor shall said company be merged into or consolidated with any other company, unless (in the event that the company at the time be managed by a board of directors elected by the holders of the common stock) there shall be first obtained the consent in writing of the holders of seventy-five per cent. of the preferred stock outstanding at the time, or unless

(in the event that at such time the company shall be managed by a board of directors elected by the holders of the preferred stock) the like consent shall be first obtained of the holders of seventy-five per cent. of the common stock.

The foregoing provisions shall be construed as limitations upon the voting power of the holders of the capital stock of the company (no voting power whatever on any question being vested in the holders of the preferred stock, except as hereinabove provided), any future law of the State of New Jersey in anywise to the contrary notwithstanding, said provisions having been agreed upon between the parties to these presents as constituting conditions precedent to the organization of said company.

Form 373.

Reservation of right to change provisions of certificate of incorporation:

The rights conferred upon stockholders in paragraphs Nos. to are subject to the reservation that the company may change, modify or amend the same, or any of them, as provided by law.

[See Section 27, p. 100; *Pronick v. Spirits Distributing Co.*, 58 N. J. Eq., 97.] (See Form No. 332.)

Form 374.

Reservation of power to change provisions of certificate of incorporation except in certain particulars:

The corporation reserves the right to amend, alter or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation, except that there shall be no change in the per centum, cumulation, or time of payment of dividends upon the preferred stock.

Form 375.

Power reserved to create preferred stock:

The company shall have power, on any increase of the capital of the company over one hundred thousand dollars, to create two or more kinds of stock of such classes, with such designations, preferences and voting powers or restriction or qualification thereof as shall be lawfully prescribed in any resolution passed by the holders

of a majority in interest at a general meeting, being not less than two-thirds of the total capital stock of the company, present in person or by proxy in such meeting, provided that at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital of the company.

Form 376.

Limitation on power to issue preferred stock and bonds:

No preferred stock shall be issued by the corporation nor shall any mortgage or bonded indebtedness (except as hereinafter provided) be created by it except after first obtaining the consent of the holders of _____ per centum of all the issued and outstanding capital stock of the corporation; which consent shall be given in writing or by vote at a meeting of the stockholders; provided, however, that the board of directors shall have power, without any such consent of stockholders, at any time or times within five years from the _____ day of _____, one thousand nine hundred and _____, to issue bonds of the corporation to an amount not exceeding in the aggregate _____ dollars (\$ _____), payable in not more than _____ years from the date of the issue thereof and to secure the payment of such bond by the execution and delivery of a mortgage upon all the assets and franchises of the corporation owned by it at the time of the execution of such mortgage or that it may thereafter acquire, and further provided, that the board of directors shall have power without any such consent of stockholders, at any time or times, to execute and deliver purchase-money mortgages covering specific properties that may be purchased by the corporation.

THE BY-LAWS.

MATTERS TO BE PROVIDED FOR IN THE BY-LAWS.

[The references are to sections of the General Corporation Act.]

(1) The number of directors should be fixed. Afterwards the number may be altered. §1, subdiv. VI.

(2) Provisions for the management of the corporate property. §1, subdiv. VI.

(3) Provisions for the regulation and government of the affairs of the company. §1, subdiv. VI.

(4) The time of the annual election should be fixed. The place of the election, i. e., the registered office of the company, is re-

quired to be fixed by the certificate of incorporation. §8, subdiv. II. §12.

(5) Classification of directors if authorized by certificate of incorporation. §12.

(6) Provide whether officers shall be elected by stockholders or directors. §13.

(7) Duties of president, secretary and treasurer. §13.

(8) Treasurer's bond. §13.

(9) Manner of election or appointment and tenure of other officers, agents, &c. §14.

(10) Filling of vacancies among directors and officers. If no provision is made vacancies are filled by the board of directors. §15.

(11) Manner of calling and conducting meetings. §17.

(12) Qualification of voters at meetings of the stockholders, whether one or more shares is necessary for each vote. §17.

(13) Manner of transferring stock and regulations as to transfers. §1, subdiv. VI. §20.

(14) Fix quorum for stockholders' meetings. §§17, 34.

(15) Number of shares to entitle stockholders to one vote at elections. §36.

(16) Qualification of directors. §39.

(17) Establishment of office outside of state, and authority to directors to keep books out of state. §44.

(18) Date of declaration of dividends. §47.

(19) Power to directors to fix amount to be reserved as working capital. §47.

No form of by-laws can be given which may be safely followed under all circumstances. The by-laws are a supplement to the certificate of incorporation and should follow and complete the scheme of organization laid therein, especially with reference to the government of the internal affairs of the company. As the former requires the services of skilled counsel, so the latter require like assistance, and no ready made form of by-laws would, without modification, be valuable for general use. The sections pertaining to the business management of the company are specially susceptible of changes to meet the requirements of each case.

Form 377.

BY-LAWS.

[Short Form.]

Meetings of stockholders:

1. All meetings of stockholders shall be held at the registered office in New Jersey. (Sec. 44, ante.)

2. A majority of the stock issued and outstanding represented

by the holders thereof, either in person or by proxy, shall be a quorum at all meetings of stockholders.¹

3. The annual meeting of stockholders, after the year 19 , shall be held on the first day of , in each year, at M., when they shall elect, by a plurality vote, by ballot, the board of directors as constituted by these laws, each stockholder being entitled to one vote, in person or by proxy, for each share of stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

4. Notice of the annual meeting shall be mailed to each stockholder at his address as the same appears upon the records of the company at least days prior to the meeting.

5. At such annual meeting, if a majority of the stock shall not be represented, the stockholders present shall have power to adjourn to a day certain, and notice of the meeting of the adjourned day shall be given by depositing the same in the post office addressed to each stockholder at least five days before such adjourned meeting, exclusive of the day of mailing, but if a majority of the stock be present in person or by proxy they shall have power from time to time to adjourn the annual meeting to any subsequent day or days, and no notice of the adjourned meeting need be given.

6. Special meetings of the stockholders shall, at the request of any director, be called by the secretary by mailing a notice stating the object of such meeting, at least two days prior to the date of meeting, to each stockholder of record at his address, as the same appears on the records of the company.

Directors:

7. The directors, in number, shall be chosen from the stockholders and shall hold office for one year and until others are elected and qualified in their stead. The number of directors may be increased or decreased by amendment of this provision of the by-laws.

Meetings of directors; quorum:

8. Stated meetings of the directors shall be held without notice on the first day of each month at M. at the office of the company in the City of .

9. A majority of the directors in office shall constitute a quorum for the transaction of business.²

10. Special meetings of the board may be called by the president on one day's notice by mail or personally to each director.

¹ See §17, p. 73, and §34, p. 120, ante.

² See note, p. 52.

11. The directors may hold their meetings and have an office and keep the books of the company (except the stock and transfer books), outside of the State of New Jersey, in the City of or such other place or places as they may from time to time determine.

Powers of the directors:

12. The board of directors shall have the management of the business of the company, and may, subject to the provisions of the statute, of the charter and of these by-laws, exercise all such powers and do all such things as may be exercised or done by the corporation.

Executive committee:

13. There may be an executive committee of directors appointed by the board, who shall meet when they see fit. They shall have authority to exercise all the powers of the board at any time when the board is not in session.

14. The executive committee may act by the written consent of a quorum thereof, although not formally convened.

Officers:

15. At the first meeting after the annual election of directors, when there shall be a quorum, the board of directors shall appoint a president and vice-president from their own number who shall hold office for one year and until their successors are appointed and qualify.

16. The board shall also annually choose a secretary and a treasurer (or one person to act as both secretary and treasurer), who need not be members of the board, who shall hold office for one year, subject to removal by the board at any time, with or without cause. The board may also appoint and remove such other officers and agents as they deem proper.

President:

17. The president shall be the chief executive officer and head of the company, and in the recess of the board of directors and of the executive committee shall have general control and management of its business and affairs. He shall, with the treasurer, sign all certificates of stock.

Vice-president:

18. The vice-president shall be vested with all the powers, and shall perform all the duties of the president in his absence.

The secretary:

19. The secretary shall be ex-officio clerk of the board of di-

rectors and of the standing committees; he shall attend all sessions of the board, and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose.

20. He shall give notice of all calls for installments to be paid by the stockholders, and shall see that proper notice is given of all meetings of the stockholders and of the board of directors.

21. He shall be sworn to the faithful discharge of his duty and shall perform such duties as may be required by the board of directors or the president.

The treasurer:

22. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in the name and to the credit of the company in such depositories as may be designated by the board of directors.

23. He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meetings of the board, and whenever they may require it, account of all his transactions as treasurer and of the financial condition of the company. He shall, with the president, sign all certificates of stock.

Vacancies:

24. If the office of any director or member of the executive committee, or of the president, vice-president, secretary or treasurer, one or more, becomes vacant, by reason of death, resignation, disqualification or otherwise, the remaining directors, although less than a quorum, by a majority vote, may elect a successor or successors, who shall hold office for the unexpired term.

Duties of officers may be delegated:

25. In case of the absence of an officer of the company, or for any other reason that may seem sufficient to the board, the board of directors may delegate his powers and duties for the time being to any other officer, or to any director.

Offices:

26. The company may have an office and transact business in the City of _____, State of _____, and at such other places as the board of directors may from time to time appoint or the business of the company may require.

Fiscal year:

27. The fiscal year of the company shall begin the first day of _____ in each year.

Dividends:

28. Dividends upon the capital stock of the company when earned shall be payable annually on the first day of _____ in each year.

29. Before payment of any dividends or making any distribution of profits, there may be set aside out of the net profits of the company such sum or sums as the directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the company, or for any such other purpose as the directors shall think conducive to the interests of the company.

Waiver of notice:

30. Any stockholder or director may waive any notice required to be given under these by-laws.

Amendment of by-laws:

31. The stockholders, by the vote of a majority of the stock issued and outstanding, may at any annual or special meeting alter or amend these by-laws if notice thereof be contained in the notice of the meeting.

32. The board of directors, by a vote of _____ members, may alter or amend these by-laws at any time, provided _____ days' notice in writing shall have been given to each of the directors of the proposed amendment.

Form 378.

BY-LAWS.

[Full Form.]

ARTICLE I

STOCKHOLDERS.

1. **Annual meeting.**—A meeting of the stockholders shall be held annually at the registered office in New Jersey at _____ M. on the _____ in _____, for the purpose of electing directors, and for the transaction of any other business authorized or required to be transacted by the stockholders.

2. **Notice of annual meeting.**—Notice of the annual meeting shall be mailed at least ten days prior to the meeting to each

registered stockholder at his address as the same appears on the books of the company.

3. Special meetings.—Special meetings of the stockholders for any purpose or purposes shall be held at the registered office in New Jersey whenever called by the board of directors, either by written instrument, or by the vote of a majority, and shall be called whenever stockholders owning one-third of the capital stock issued and outstanding shall in writing make application therefor to the president, stating the object of such meeting.

4. Notice of special meetings.—Notice of each special meeting and of each meeting held pursuant to any provision of the statute, stating the time and in general terms the purpose or purposes thereof, shall be mailed at least _____ days prior to the meeting to each registered stockholder at his address as the same appears on the books of the company.

5. Quorum.¹—At any meeting of the stockholders the holders of _____ of the shares issued and outstanding, being present in person or represented by proxy, shall be a quorum for all purposes, including the election of directors, except where otherwise provided by statute or by the certificate of incorporation.

6. Order of business.—The order of business at all meetings of stockholders shall be as follows:

(1) Roll call.

A quorum being present:

(2) Reading of minutes of preceding meeting and action thereon.

(3) Reports of officers.

(4) Reports of committees.

(5) Election of directors.

(6) Unfinished business.

(7) New business.

7. Adjournments.—If at any annual or special meeting a quorum shall fail to attend in person or by proxy, a majority in interest of the stockholders attending in person or by proxy at the time and place of such meeting may, at the end of an hour, adjourn the meeting from time to time without further notice until a quorum shall attend, and thereupon any business may be transacted which might have been transacted at the meeting as originally called had the same been then held.

8. Organization.—The president, and, in his absence, the vice-president, and in the absence of the president and the vice-president, a chairman appointed by the stockholders present shall call meetings of the stockholders to order and shall act as chairman thereof.

¹ See §17, p. 73, and §34, p. 120, ante.

9. **Secretary.**—The secretary of the company shall act as secretary at all meetings of the stockholders; and, in his absence, the presiding officer may appoint any person to act as secretary.

10. **Voting.**—At each meeting of the stockholders every stockholder shall be entitled to vote in person or by proxy appointed by an instrument in writing, subscribed by such stockholder or by his duly authorized attorney and delivered to the inspectors at the meeting; at the annual meeting each stockholder shall have one vote for each share of stock registered in his name on the twentieth day preceding the meeting, and at all other meetings one vote for each share of stock registered in his name on the day preceding the meeting, exclusive of the day of such meeting. Voting for directors, and, upon demand of any stockholder, upon any question at any meeting, shall be by ballot.

11. **List of stockholders.**—At each meeting of the stockholders a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at such meeting, with the number of shares held by each, certified by the secretary or the treasurer, shall be furnished. At least ten days before each annual meeting a like list, containing also the residences of the stockholders, shall be filed in the registered office as required by statute.

12. **Polls of election.**—At all elections of directors the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted, in person or by proxy, or in writing has waived the provisions of the statute.

13. **Inspectors.**—At all elections of directors the polls shall be opened and closed, the proxies shall be received and be taken in charge, all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes, shall be decided, and all ballots shall be received and counted, by two inspectors. Such inspectors shall be appointed by the presiding officer of the meeting, shall be sworn to faithfully perform their duties, and shall, in writing, certify to the returns. No candidate for election as director shall be appointed or act as inspector.

ARTICLE II.

BOARD OF DIRECTORS.

1. **Number.**—The business and affairs of the company shall be managed and controlled by a board of directors, in number, which number may be altered from time to time, by amendment of these by-laws. If at any time the number of directors shall be increased, the additional directors shall be elected by the stockholders at a special meeting called for the purpose.

2. **Term of office.**—Each director shall serve for the term for

which he shall have been elected and until his successor shall have been duly chosen and qualified.

3. **Vacancies.**—In case of any vacancy among the directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority thereof, whether or not constituting a quorum, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant and until the election of and acceptance by his successor.

4. **Place of meeting, etc.**—The directors may hold their meetings and may have an office and keep the books of the company (except the stock and transfer books) at such place or places in the State of New Jersey, or outside of the State of New Jersey, as the board from time to time may determine.

5. **First meeting of board.**—After each annual election of directors, the newly elected directors may meet for the purpose of organization, the election of officers, and the transaction of other business, at such place and time as shall be fixed by the stockholders at the annual meeting, and if a majority of the directors be present at such place and time, no prior notice of such meeting shall be required to be given to the directors. The place and time of such first meeting may also be fixed by written consent of the directors.

6. **Regular meetings.**—Regular meetings of the board of directors shall be held on the _____ day of _____ if not a legal holiday, and if a legal holiday, then on the next succeeding business day. No notice shall be required to be given of any regular meeting.

7. **Special meetings.**—Special meetings of the board shall be held whenever called by the direction of the president or of one-third of the directors for the time being in office. Unless otherwise specified in the notice thereof, any and all business may be transacted at a special meeting.

8. **Notice of special meetings.**—The secretary shall give notice to each director of each special meeting by mailing the same at least two days before the meeting, or by telegraphing or telephoning, not later than the day before the meeting. If every director shall be present at any meeting, any business may be transacted without any previous notice.

9. **Quorum.**¹— _____ of the directors at the time in office shall constitute a quorum for the transaction of business, except where otherwise provided by statute or by the certificate of incorporation or by these by-laws; but a majority of those present at the time and place of any regular or special meeting, although less

¹See §17, p. 73, and §34, p. 120, ante.

than a quorum, may adjourn the same from time to time, without notice, until a quorum be had.

10. **Order of business.**—The board of directors may from time to time determine the order of business at their meetings. The usual order of business at such meetings is as follows:

(1) Roll call.

A quorum being present:

(2) Reading of minutes of preceding meeting and action thereon.

(3) Reports of officers.

(4) Reports of committees.

(5) Unfinished business.

(6) Miscellaneous business.

(7) New business.

11. **Chairman.**—At all meetings of the board of directors the president, or, in his absence, the vice-president, or, in his absence, a chairman chosen by the directors present, shall preside.

12. **Compensation of directors.**—For his attendance at any meeting of the board, each director, not a salaried officer of the company, shall receive the sum of \$.

13. **Board may act without meeting by written resolution.**—The board of directors and the executive committee shall, except as otherwise provided by law, have power to act in the following manner: A resolution in writing, signed by all of the members of the board of directors or executive committee, shall be deemed to be action by such board or executive committee, as the case may be, to the effect therein expressed, with the same force and effect as if the same had been duly passed by the same vote at a duly convened meeting, and it shall be the duty of the secretary of the company to record such resolution in the minute book of the company under its proper date.

ARTICLE III.

EXECUTIVE COMMITTEE AND OTHER COMMITTEES.

1. **Executive committee.**—The board may appoint an executive committee of _____ directors, and shall appoint one of them chairman of such committee to serve during the pleasure of the board.

2. **Vacancies.**—Vacancies in the executive committee shall be filled by the board.

3. **Executive committee to report to board.**—All action by the executive committee shall be reported to the board at its meeting next succeeding such action, and shall be subject to revision or alteration by the board, provided that no rights of third parties shall be affected by any such revision or alteration.

4. **Procedure.**—The executive committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the board. The presence of a majority shall be necessary to constitute a quorum, and in every case the affirmative vote of a majority of all the members of the committee shall be necessary.

5. **Compensation of members.**—The chairman and other members of the executive committee shall receive such compensation for their services as from time to time shall be fixed by the board.

6. **Powers.**—During the intervals between the meetings of the board, the executive committee shall possess and may exercise all the powers of the board in the management and direction of the business and conduct of the affairs of the company in such manner as the executive committee shall deem best for the interests of the company in all cases in which specific directions shall not have been given by the board.

7. **Other committees.**—From time to time the board may appoint any other committee or committees for any purpose or purposes, who shall have such powers as shall be specified in the resolution of appointment.

ARTICLE IV.

OFFICERS.

1. **Executive officers.**—The executive officers of the company shall be a president, a treasurer and a secretary, and, if the board shall so determine, a vice-president, or more than one vice-president, all of whom shall be elected annually by the board.

2. **Subordinate officers.**—The board may appoint such other officers as it shall deem necessary, who shall have such authority and shall perform such duties as, from time to time, may be prescribed by the board.

3. The powers and duties of the treasurer and secretary may be exercised and performed by the same person.

4. **Tenure of officers; removal.**—All officers and agents, except the president, shall be subject to removal at any time by the affirmative vote of a majority of the whole board. The board may delegate the power of removal of subordinate officers and agents to the executive committee or to any officer.

5. **The president.**—The president shall be the chief executive officer of the company. He shall preside at all meetings of the stockholders and of the board of directors. He shall have general charge of the business of the company, shall sign and execute all authorized bonds, contracts or other obligations in the name of the company, and, with the treasurer, or an assistant treasurer, shall

sign all certificates of stock of the company. He shall do and perform such other duties as, from time to time, may be assigned to him by the board.

6. **The vice-presidents.**—The board may appoint a vice-president, or more than one vice-president. Each vice-president shall have such powers and shall perform such duties as may be assigned to him by the board. In case of the absence or disability of the president, the duties of the office shall be performed by the vice-president until the board shall otherwise determine.

7. **The treasurer.**—The treasurer shall have the custody of all the funds and securities of the company which may come into his hands; he shall endorse, on behalf of the company for collection, checks, notes and other obligations, and shall deposit the same to the credit of the company in such bank or banks, or depositories, as the board of directors may designate; he shall sign receipts and vouchers for payments made to the company; jointly with such other officer as may be designated by the board, or singly, if authorized by the board, he shall sign checks made by the company, and shall pay out and dispose of the same under the direction of the board; he shall sign, with the president, or such other person or persons as may be designated by the board, all bills of exchange and promissory notes of the company; he shall sign, with the president or a vice-president, certificates of stock; whenever required by the board, he shall render a statement of his cash accounts; he shall enter regularly, in books of the company to be kept by him for that purpose, full and accurate accounts of all moneys received and paid by him on account of the company; and he shall perform all duties incident to the position of treasurer, subject to the control of the board. By virtue of his office the treasurer shall be assistant secretary, and in the absence or disability of the secretary shall perform the duties of the secretary.

8. **Treasurer's bond.**—He shall give a bond for the faithful discharge of his duties in such sum as the board may require.

9. **The secretary.**—The secretary shall keep the minutes of all proceedings of the board and the minutes of all meetings of the stockholders, and also (unless otherwise directed by such committee) the minutes of each committee in books provided for that purpose; he shall attend to the giving and serving of all notices for the company; he shall sign with the president in the name of the company all contracts authorized by the board, and when so ordered by the board, shall affix the seal of the company thereto; he shall have charge of the certificate books and such other books and papers as the board may direct; and he shall in general perform all the duties incident to the office of secretary, subject to the control of the board. By virtue of his office the secretary shall be assistant

treasurer, and in the absence or disability of the treasurer he shall perform the duties of the treasurer.

10. **Secretary's oath.**—He shall be sworn to the faithful discharge of his duty.

ARTICLE V.

CAPITAL STOCK.

1. **Form and execution of certificates.**—The certificates of shares of the capital stock of the company shall be in such form as shall be approved by the board. The certificate shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

2. **Certificates to be entered.**—All certificates shall be consecutively numbered, and the names of the owners, the number of shares and the date of issue, shall be entered in the company's books.

3. **Old certificates to be cancelled.**—Except in case of lost or destroyed certificates, and in that case after the receipt of a satisfactory bond, unless the giving of a bond be waived, no new certificate shall be issued until the former certificate for the shares represented thereby shall have been surrendered and cancelled.

4. **Transfer of shares.**—Shares shall be transferred only on the books of the company by the holder thereof in person or by his attorney, upon the surrender and cancellation of certificates for a like number of shares.

5. **Regulations.**—The board may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates of stock of the company.

6. **Transfer agent and registrar.**—The board may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signatures of either or both.

7. **Closing of transfer books.**—If deemed expedient by the board, the stock books and transfer books may be closed for the meetings of the stockholders and for the payment of dividends during such periods as, from time to time, may be fixed by the board, and during such periods no stock shall be transferable on such books.

ARTICLE VI.

DIVIDENDS AND WORKING CAPITAL.

1. **Board to declare dividends.**—The board, in its discretion, from time to time, may declare dividends upon the capital stock from the surplus or net profits of the company, and, subject to the provisions of the certificate of incorporation, may fix and change the dates for the declaration and payment of dividends.

2. **Working capital.**—The board of directors may fix a sum which may be set aside or reserved, over and above the company's capital stock paid in, as a working capital for the company, and from time to time they may increase, diminish and vary the same in their absolute judgment and discretion.

ARTICLE VII.

SEAL.

1. **Seal.**—The board shall provide a suitable seal, containing the name of the company, the year of its creation, and the words "corporate seal, N. J.," or other appropriate words, which seal shall be in charge of the president, to be used as directed by the board.

ARTICLE VIII.

FISCAL YEAR.

1. **Fiscal year.**—The fiscal year of the company shall begin

ARTICLE IX.

NOTICE AND WAIVER OF NOTICE.

1. **Notice.**—Any notice required to be given by these by-laws may be given by mailing the same addressed to the person entitled thereto at his address as shown on the company's books, and such notice shall be deemed to be given at the time of such mailing.

2. **Waiver of notice.**—Any stockholder, director or officer may waive any notice required to be given by these by-laws.

ARTICLE X.

REGISTERED OFFICE.

1. **The registered office** shall be at 525 Main Street, East Orange, New Jersey, and the New Jersey Registration & Trust Company shall be the registered agent of the company.

ARTICLE XI.

INTERPRETATION.

1. In these by-laws, unless there shall be something in the subject or context inconsistent therewith:

"In writing" and "written" mean written or printed, or partly printed and partly written.

"Registered office" and "principal office" mean the principal office in New Jersey designated as such, pursuant to law.

“Stockholder” means a registered owner of a share or shares of the capital stock.

“Statute” means “An Act Concerning Corporations (Revision of 1896),” its amendments and supplements, of New Jersey.

“Board” and “board of directors” mean the directors of the company for the time being, duly convened in a regular or special meeting, and also includes “executive committee.”

Words importing the singular number include the plural, and vice versa, and words importing males include females.

Words importing natural persons include corporations.

ARTICLE XII.

AMENDMENTS.

1. **Directors may amend by-laws.**—The board of directors shall have power to make, amend and repeal the by-laws of the company by a vote of the majority of all of the directors at any regular or special meeting of the board, provided that notice of intention to make, amend or repeal the by-laws in whole or in part at such meeting shall have been previously given to each member of the board, or without any such notice by a vote of two-thirds of all the directors.

2. **All by-laws subject to amendment by stockholders.**—All by-laws shall be subject to amendment, alteration and repeal by the stockholders at any annual meeting and at any special meeting called for that purpose.

Form 379.

BY-LAWS OF THE UNITED STATES STEEL CORPORATION AS AMENDED TO MARCH 4, 1902.

ARTICLE I.

STOCKHOLDERS.

Section 1. Annual meeting.—Until the annual meeting of stockholders to be held in the year 1902, a meeting of the stockholders of the company shall be held annually at the principal office of the company in the State of New Jersey, at twelve o'clock noon on the third Monday in February in each year, if not a legal holiday, and if a legal holiday then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting.

After such meeting of the stockholders to be held in the year 1902, such meeting of the stockholders shall be held annually at said

office on the third Monday of April in each year, if not a legal holiday, and if a legal holiday then on the next succeeding Monday not a legal holiday; and the terms of office of the directors of the several classes shall continue until the election of their successors at such meeting as provided in Article II hereof.

It shall be the duty of the secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J., New York, N. Y., Chicago, Ill., and Pittsburg, Pa. Nevertheless, a failure to publish such notice, or any irregularity in such notice, or in the publication thereof shall not affect the validity of any annual meeting or of any proceedings at any such meeting.

Sec. 2. Special meetings.—Special meetings of the stockholders may be held at the principal office of the company in the State of New Jersey, whenever called in writing, or by vote, by a majority of the board of directors.

Notice of each special meeting, indicating briefly the object or objects thereof, shall by the secretary be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J.; New York, N. Y.; Chicago, Ill., and Pittsburg, Pa. Nevertheless, if all the stockholders shall waive notice of a special meeting, no notice of such meeting shall be required; and whenever all the stockholders shall meet in person or by proxy, such meeting shall be valid for all purposes without call or notice, and at such meeting any corporate action may be taken.

Sec. 3. Quorum.¹—At any meeting of the stockholders the holders of one-third of all of the shares of the capital stock of the company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and, in that case the representation of the number so required, shall constitute a quorum.

If the holders of the amount of stock necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

¹See §17, p. 73, and §34, p. 120, ante.

Sec. 4. Organization.—The president, and in his absence the chairman of the executive committee, shall call meetings of the stockholders to order, and shall act as chairman of such meetings. The board of directors may appoint any stockholder to act as chairman of any meeting in the absence of the president and of the chairman of the executive committee.

The secretary of the company shall act as secretary at all meetings of the stockholders; but in the absence of the secretary at any meeting of the stockholders the presiding officer may appoint any person to act as secretary of the meeting.

Sec. 5. Voting.—At each meeting of the stockholders every stockholder shall be entitled to vote in person, or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name at the time of the closing of the transfer books for said meeting. The votes for directors, and, upon demand of any stockholder, the votes upon any question before the meeting, shall be by ballot.

At each meeting of the stockholders a full, true and complete list, in alphabetical order, of all of the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the secretary or by the treasurer, shall be furnished. Only the persons in whose names shares of stock stand on the books of the company at the time of the closing of the transfer books for such meeting, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the time of closing the transfer books for such meeting, any proxy may submit his powers of attorney to the secretary, or to the treasurer for examination. The certificate of the secretary, or of the treasurer, as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney, shall be received as prima facie evidence of the number of shares represented by the holder of such powers of attorney for the purpose of establishing the presence of a quorum at such meeting, and of organizing the same, and for all other purposes.

Sec. 6. Inspectors.—At each meeting of the stockholders the polls shall be opened and closed; the proxies and ballots shall be received and be taken in charge; and all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes shall be decided by three inspectors. Such inspectors shall be appointed by the board of directors before or at the meeting, or, if no such appointment shall have been made, then

by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend or refuse or be unable to serve, inspectors in place of any so failing to attend, or refusing or unable to attend, shall be appointed in like manner.

ARTICLE II.

BOARD OF DIRECTORS.

Section 1. Number, classification and term of office.—The business and the property of the company shall be managed and controlled by the board of directors.

As provided in the certificate of incorporation, the directors shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years; and the directors of the third class shall be elected for a term of three years. At each annual election, the successors to the directors of the class whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

The number of directors shall be twenty-four, but the number of directors may be altered from time to time by the alteration of these by-laws.

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion of the term of one year; one-third for the unexpired portion of the term of two years, and one-third for the unexpired portion of the term of three years, so that each class of directors shall be increased equally.

Every director shall be a holder of at least one share of the capital stock of the company. Each director shall serve for the term for which he shall have been elected, and until his successor shall have been duly chosen.

At all elections of the directors, the polls shall remain open for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy, or in writing has waived the statutory provision.

Sec. 2. Vacancies.—In case of any vacancy in any class of the directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the

term of the director whose place shall be vacant, and until the election of his successor.

Such vacancy shall be filled upon and after nominations therefor shall have been made by the finance committee.

Sec. 3. Place of meeting, etc.—The directors may hold their meetings, and may have an office and keep the books of the company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey or outside of the State of New Jersey as the board from time to time may determine.

Sec. 4. Regular meetings.—Regular meetings of the board of directors shall be held monthly on the first Tuesday of each month, if not a legal holiday, and if a legal holiday, then on the next succeeding Tuesday, not a legal holiday. No notice shall be required for any such regular monthly meeting of the board.

Sec. 5. Special meetings.—Special meetings of the board of directors shall be held whenever called by direction of the president, or of one-third of the directors for the time being in office.

The secretary shall give notice of each special meeting by mailing the same at least two days before the meeting or by telegraphing the same at least one day before the meeting to each director; but such notice may be waived by any director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

Sec. 6. Quorum.¹—A majority of the board of directors shall constitute a quorum for the transaction of business; but, if at any meeting of the board there be less than a quorum present a majority of those present may adjourn the meeting from time to time.

The affirmative vote of at least two-fifths of all the directors for the time being in office shall be necessary for the passage of any resolution.

Sec. 8. Order of business.—At meetings of the board of directors business shall be transacted in such order as, from time to time, the board may determine by resolution.

At all meetings of the board of directors, the president, or in his absence the chairman of the executive committee, or in the absence of both of these officers the chairman of the finance committee shall preside.

Sec. 9. Contracts.—Inasmuch as the directors of this company are men of large and diversified business interests, and are likely to be connected with other corporations with which from time to time this company must have business dealings, no contract or

¹See §17, p. 73, and §34, p. 120, ante.

other transaction between this company and any other corporation shall be affected by the fact that directors of this company are interested in, or are directors or officers of, such other corporation, if, at the meeting of the board, or of the committee of this company making, authorizing or confirming such contract or transaction, there shall be present a quorum of directors not so interested and any director individually may be a party to, or may be interested in, any contract or transaction of this company, provided that such contract or transaction shall be approved or be ratified by the affirmative vote of at least ten directors not so interested.

*The board of directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders, or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the capital stock of the company which is represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

Sec. 10. **Compensation of directors.**—For his attendance at any meeting of the board of directors, or of any committee of the board, every director shall receive an allowance of ten cents for every mile travelled by him for attendance at such meeting, and also the sum of twenty dollars for attendance at each meeting. The same mileage allowance shall be made to any officer who by direction of the board, or of the president, shall attend any such meeting.

ARTICLE III.

EXECUTIVE COMMITTEE AND FINANCE COMMITTEE.

Section 1. The board of directors shall elect from the directors an executive committee and a finance committee; and shall designate for each of those committees a chairman, who shall continue to be chairman of the committee during the pleasure of the board of directors.

The board of directors shall fill vacancies in the executive committee or in the finance committee by election from the directors; and at all times it shall be the duty of the board of directors to keep the membership of each of such committees full, with due regard to the qualifications for such membership indicated in this article of the by-laws.

* Construed in *Berger v. U. S. Steel Corporation*, 63 N. J. Eq., 809,

All action by the executive committee, or by the finance committee, shall be reported to the board of directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the board of directors; provided that no rights or acts of third parties shall be affected by any such revision or alteration.

The executive committee and the finance committee each shall fix its own rules of proceeding, and shall meet where and as provided by such rules, or by resolution of the board of directors, but in every case the presence of a majority shall be necessary to constitute a quorum.

In every case the affirmative vote of a majority of all of the members of the committee shall be necessary to its adoption of any resolution.

The chairman and each of the members of the executive committee shall receive such compensation for their services as from time to time shall be fixed by the finance committee and be approved by the board of directors.

Sec. 2. The executive committee shall consist of six members besides the president and the chairman of the finance committee, each of whom, by virtue of his office, shall be a member of the executive committee. So far as practicable each of the six elected members of the executive committee shall be a person having, or having had, personal experience in the conduct of one or the other of the branches of manufacture or mining, or of transportation in which the company is interested; and, so far as practicable, the six elected members shall be taken equally from the three classes of directors. Unless otherwise ordered by the board of directors each elected member of the executive committee shall continue to be a member thereof until the expiration of his term of office as a director.

During the intervals between the meetings of the board of directors, the executive committee shall possess, and may exercise, all the powers of the board of directors in the management and direction of the manufacturing, mining and transportation operations of the company, and of all other business and affairs (except the matters hereinafter assigned to the finance committee) in such manner as the executive committee shall deem best for the interests of the company, in all cases in which specific directions shall not have been given by the board of directors.

During the intervals between the meetings of the executive committee the chairman thereof shall possess and may exercise such of the powers vested in the executive committee as from time to time may be conferred upon him by resolution of the board of directors, or of the executive committee.

Sec. 3. The finance committee shall consist of four members,

besides the president and the chairman of the executive committee, each of whom, by virtue of his office, shall be a member of the finance committee. So far as practicable each of the four elected members of the finance committee shall be a person of experience in matters of finance; and so far as practicable the four elected members shall be taken equally from the three classes of directors. Unless otherwise ordered by the board of directors, each elected member of the finance committee shall continue to be a member thereof until the expiration of his term of office as a director.

The finance committee shall have special and general charge and control of all financial affairs of the company. The general counsel, the treasurer, the comptroller and the secretary, and their respective offices shall be under the direct control and supervision of the finance committee.

During the intervals between the meetings of the board of directors, the finance committee shall possess, and may exercise, all the powers of the board of directors in the management of the financial affairs of the company, including its purchases of property, and the execution of legal instruments with or without the corporate seal, in such manner as said committee shall deem to be best for the interests of the company, in all cases in which specific directions shall not have been given by the board of directors.

During the intervals between the meetings of the finance committee, and subject to its review, the chairman thereof shall possess and may exercise any of the powers of the committee except as from time to time shall be otherwise provided by resolution of the board of directors or of the finance committee, but not of the executive committee.

Except as otherwise provided by the by-laws, or by resolution of the board of directors, all salaries and compensations paid or payable by the company shall be fixed by the finance committee.

No director shall become a salaried employee of the company except by special vote of the finance committee.

ARTICLE IV.

OFFICERS.

Sec. 1. **Officers.**—The executive officers of the company shall be a president, a vice-president, or more than one vice-president, a general counsel, a treasurer, a secretary and a comptroller, all of whom shall be elected by the board of directors.

The board of directors may appoint such other officers as they shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the board of directors.

The powers and duties of the treasurer and secretary may be exercised and performed by the same person.

In its discretion the board of directors, by the vote of a majority thereof, may leave unfilled for any such period as it may fix by resolution any office except those of president, treasurer, secretary and comptroller.

All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole board of directors. All officers, agents and employees, other than officers appointed by the board of directors, shall hold office at the discretion of the committee or of the officer appointing them.

The finance committee shall have power to suspend the general counsel, the treasurer, the secretary or the comptroller, and to remove any one in the department of the general counsel, of the treasurer, of the secretary or of the comptroller. The executive committee shall have power to remove all officers, agents and employees of the company, except officers elected or appointed by the board of directors, and except officers, agents and employees in the department of the treasurer, of the secretary, of the general counsel or of the comptroller.

Sec. 2. Powers and duties of the president.—The president shall preside at all meetings of the stockholders and of the board of directors, and, by virtue of his office, he shall be a member (but not chairman) of the executive committee and of the finance committee. Subject to the executive committee, he shall have general charge of the business of the company, including manufacturing, mining and transportation, may sign and execute all authorized bonds, contracts or other obligations in the name of the company, and with the treasurer or an assistant treasurer may sign all certificates of the shares in the capital stock of the company. He shall do and perform such other duties as from time to time may be assigned to him by the board of directors.

Sec. 3. Vice-presidents.—The board of directors may appoint a vice-president or more than one vice-president. Each vice-president shall have such powers, and shall perform such duties as may be assigned to him by the board of directors.

Sec. 4. The general counsel.—The general counsel shall be the chief consulting officer of the company in all legal matters, and, subject to the board of directors and the finance committee, shall have general control of all matters of legal import concerning the company.

Sec. 5. Powers and duties of treasurer.—The treasurer shall have custody of all the funds and securities of the company which may have come into his hands; when necessary or proper he shall endorse on behalf of the company for collection checks, notes and

other obligations and shall deposit the same to the credit of the company in such bank or banks or depository as the board of directors or the finance committee may designate; he shall sign all receipts and vouchers for payments made to the company; jointly with such other officer as may be designated by the finance committee he shall sign all checks made by the company, and shall pay out and dispose of the same under the direction of the board or of the finance committee; he shall sign, with the president, or such other person or persons as may be designated for the purpose by the board of directors or the finance committee, all bills of exchange and promissory notes of the company; he may sign, with the president or a vice-president, all certificates of shares in the capital stock; whenever required by the board of directors or by the finance committee he shall render a statement of his cash account; he shall enter regularly, in books of the company to be kept by him for the purpose, full and accurate account of all moneys received and paid by him on account of the company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company, upon application at the office of the company during business hours; and he shall perform all acts incident to the position of treasurer, subject to the control of the board of directors or of the finance committee. By virtue of his office the treasurer shall be assistant secretary.

He shall give a bond for the faithful discharge of his duties in such sum as the board of directors or the finance committee may require.

Sec. 6. Assistant treasurers.—The board of directors or the finance committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be assigned to him by the board of directors or by the finance committee.

Sec. 7. Power and duties of secretary.—The secretary shall keep the minutes of all meetings of the board of directors, and the minutes of all meetings of the stockholders, and also (unless otherwise directed by the finance committee) the minutes of all committees in books provided for that purpose; he shall attend to the giving and serving of all notices of the company; he may sign with the president in the name of the company all contracts authorized by the board of directors, or by the finance committee, and, when so ordered by the board of directors or the finance committee, he shall affix the seal of the company thereto; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the board of directors or the finance committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the company during business hours; and he shall in general

perform all the duties incident to the office of secretary, subject to the control of the board of directors, and of the finance committee. By virtue of his office the secretary shall be assistant treasurer.

Sec. 8. Assistant secretaries.—The board of directors or the finance committee may appoint one assistant secretary or more than one assistant secretary. Each assistant secretary shall have such powers and shall perform such duties as may be assigned to him by the board of directors, or by the finance committee.

Sec. 9. Comptroller.—The comptroller shall be the principal officer in charge of the accounts of the company; and shall perform such duties as from time to time may be assigned to him by the board of directors or the finance committee.

Sec. 10. Voting upon stocks.—Unless otherwise ordered by the board of directors, or by the finance committee, the chairman of the finance committee or the chairman of the executive committee shall have full power and authority in behalf of the company to attend and to act and to vote at any meetings of stockholders of any corporation in which the company may hold stock, and at any such meeting shall possess and may exercise any and all the rights and powers incident to the ownership of such stock, and which, as the owner thereof, the company might have possessed and exercised if present. The board of directors or the finance committee, by resolution, from time to time may confer like powers upon any other person or persons.

ARTICLE V.

CAPITAL STOCK—SEAL.

Sec. 1. Certificates of shares.—The certificates for shares of the capital stock of the company shall be in such form, not inconsistent with the certificate of incorporation as shall be prepared or be approved by the board of directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the company's books.

No certificate shall be valid unless it is signed by the president or a vice-president, and by the treasurer or an assistant treasurer.

All certificates surrendered to the company shall be cancelled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and cancelled.

Sec. 2. Transfer of shares.—Shares in the capital stock of the company shall be transferred only on the books of the company by

the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

Sec. 3. Regulations.—The board of directors, and the finance committee also, shall have power and authority to make all such rules and regulations as respectively they may deem expedient concerning the issue, transfer and registration of certificates for shares of the capital stock of the company.

The board of directors or the finance committee may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of such transfer agent and of such registrar of transfers.

Sec. 4. Closing of transfer books.—The stock transfer books shall be closed for the meetings of the stockholders, and for the payment of dividends, during such periods as from time to time may be fixed by the board of directors or by the finance committee, and during such periods no stock shall be transferable.

Sec. 5. Dividends.—The board of directors may declare dividends from the surplus or net profits of the company.

The dates for the declaration of dividends upon the preferred stock, and upon the common stock of the company, shall be the days by these by-laws fixed for the regular monthly meetings of the board of directors in the months of April, July, October and January in each year, on which days the board of directors, in its discretion, shall declare what, if any, dividends shall be declared upon the preferred stock, and the common stock, or either of such stocks.

The dividends upon the preferred stock, if declared, severally and respectively, shall be payable quarterly upon the fifteenth day of May, of August, of November and of February in each year.

The dividends upon the common stock, if declared, severally and respectively shall be payable quarterly on the thirtieth day of June, of September, of December and of March in each year.

If the date herein appointed for the payment of any dividend shall in any year fall upon a legal holiday, then the dividend payable on such date shall be paid on the next day not a legal holiday.

Sec. 6. Working capital.—The directors shall not be required in January in each year, after reserving, over and above its capital stock paid in as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; but the board of directors may fix a sum which may be set aside or reserved, over and above the company's capital paid in, as a working capital for the company, and from time to time they may increase, diminish and vary the same in their absolute judgment and discretion.

Sec. 7. Corporate seal.—The board of directors shall provide a suitable seal, containing the name of the company, which seal shall be in charge of the secretary, if and when so directed by the board of directors or by the finance committee. A duplicate of the seal may be kept and used by the treasurer or by any assistant secretary or assistant treasurer.

ARTICLE VI.

AMENDMENTS.

Section 1. The board of directors shall have power to make, amend and repeal the by-laws of the company, by a vote of a majority of all of the directors, at any regular or special meeting of the board, provided, that notice of intention to make, amend or repeal the by-laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all of the directors.

ORGANIZATION MEETINGS.

FIRST MEETING OF INCORPORATORS.

After filing the certificate of incorporation with the secretary of state, a meeting of the incorporators should be held at the registered office in New Jersey, and the preliminary formal organization of the company effected.

The common practice is for the incorporators to sign a written waiver of notice fixing the time and place of the meeting. (Form 381.)

A certified copy of the certificate of incorporation should be presented, and it is usual to enter it at length in the minutes.

The by-laws should be adopted section by section, and these should also be entered at length in the minutes. (Forms 377, 378.)

Inspectors of election should be appointed and sworn preliminary to the election of directors, which should then be held. (Form 384.) It is not necessary that the inspectors shall be stockholders. If the persons to be elected directors are not subscribers to the certificate of incorporation, they may qualify by having assignments of subscription made to them by one of the incorporators. (Form 383.)

A waiver by the stockholders of notice of assessment upon the capital stock should be signed and presented and also entered at length upon the minutes. (Form 385.)

A resolution authorizing the directors to assess the stock, in accordance with the terms of the waiver, should be passed.

In case the company is formed for the purpose of taking over

an existing business or purchasing certain property the stockholders should authorize the directors to take over and purchase the business or property and pay for it in stock of the company, or partly in stock and partly in cash or obligations of the company, as the circumstances of the case may require.

It is wise at this point to authorize the issue of stock from the amount named in the certificate of incorporation as the amount with which the company will begin business, to the amount authorized by the charter as the total amount of capital. This can be done by resolution at this time and avoid the necessity of calling another stockholders' meeting, leaving it within the power of the directors, at their discretion, to issue the additional stock.

The design of the seal of the company should be adopted and the form of the stock certificate should also be passed upon and approved and entered at length in the minutes. (Form 386.)

There is no necessity for any fixed number of incorporators to be present in person at this meeting; it is legal and not unusual for all the incorporators to attend by proxy.

For a short form of minutes of first meeting of incorporators see page 380.

FIRST MEETING OF DIRECTORS.

The meeting of the directors need not be held in New Jersey. It may, if the certificate of incorporation or by-laws so provide, be held at any place fixed upon and agreed to by the directors as evidenced by a waiver signed by them all, fixing the time, place and object of the meeting. (Form 387.)

The minutes of the stockholders' meeting should be read and recommendations, if any, acted upon.

The board should elect the officers of the company.

The oath should be administered to the secretary. (Form 388.)

The treasurer should give a bond, the form, the amount and the sureties or surety being passed upon and approved by the board. (Form 389.)

If the by-laws provide for an executive committee the members should be appointed.

The secretary should be given authority to procure the corporate books, seal, etc.

A resolution should be placed upon the records in the form required by the bank with which the company is to deposit, authorizing the treasurer to open a bank account with the bank and designating the manner in which checks and drafts shall be signed, whether by one officer or more. A certified copy of this resolution should be filed with the bank. (Form 392.)

A resolution should be passed appointing the statutory registered agent in New Jersey.

MINUTES, FIRST MEETING OF INCORPORATORS. 595

The directors should also pass a resolution with regard to the office of the company outside of the State of New Jersey, and, if desired, should authorize meetings of the board to be held at the office out of the state.

A formal resolution is usual directing the officers in accordance with the resolution of the stockholders to call the assessment of stock, and also directing the proper officers of the company to complete the purchase of the property, if any, specified in the minutes of the stockholders' meeting, and to issue stock therefor. An agreement of sale should also be presented, approved and ordered to be executed in behalf of the company. (Form 390.)

Care should be taken in this resolution to recite that the directors have passed upon the value of the property and that in their judgment it is of the value placed upon it and for which the stock is to be issued.

If the stockholders have passed a resolution authorizing the directors to issue the stock beyond the amount named in the charter as the amount with which the company will begin business, a resolution effectuating such issue may be passed.

If the corporation is to do business in any state requiring a certificate or statement to be filed, authority should be given to the proper officers to execute such certificate in conformity with the laws of such state.

Finally a direction should be placed upon the record, that the secretary forthwith file in the office of the secretary of state the statement required by Section 43, as amended in 1900. (Form 386.)

These are the formal provisions, and any further or other provisions or special matters should be inserted at length. Any bills which have been paid or are to be paid should be passed upon and audited.

If the company is organized for the purpose of taking over an existing business, it is usual to send out a circular informing the customers, and sometimes a notice is published in the newspapers mentioning the change of the firm into a corporation, with a statement that all of the shares are taken up by the co-partners, or otherwise, in accordance with the facts.

For a short form of minutes of first meeting of directors see page 600.

Form 380.

MINUTES OF FIRST MEETING OF INCORPORATORS.

The first meeting of the corporation was held on the day
of , 190 , at M., at the office of
(designated in the certificate of incorporation as the

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registered office of the company), pursuant to a written waiver of notice signed by all the incorporators, fixing said time and place.

The following incorporators were present or represented:

[Insert names of incorporators and number of shares held by each, and state whether present in person or represented by proxy.]

On motion Mr. _____ was elected chairman, and Mr. _____ was appointed secretary of the meeting.

The chairman reported that the certificate of incorporation of the company was recorded in the office of the clerk of Essex County, on the _____ day of _____, 19____, and was filed on the _____ day of _____, 19____, in the office of the secretary of state, and presented a copy of said certificate of incorporation.

The secretary presented and read the waiver of notice of the meeting.

The secretary presented a form of by-laws for the regulation of the affairs of the company, which were read article by article and unanimously adopted.

Messrs. _____ were appointed inspectors of election and the oath was duly administered to them.

The secretary presented the following transfers of subscription to take effect when accepted by the company. (See Form 383.)

Messrs. *(names of persons to be elected directors)* were nominated for directors of the company, to hold office for the ensuing year. No other nominations having been made, the polls were duly opened, and ballot having been duly had, and all the stockholders having voted, the polls were declared closed and the inspectors presented their certificate showing that the aforesaid gentlemen had been elected directors of the company.

Upon motion, duly seconded, the transfers of subscription presented at this meeting were approved and accepted in behalf of the company.

Upon motion, duly made and seconded, and by the affirmative vote of all present, the following resolution was adopted:

Ordered, that in compliance with the laws of New Jersey and the charter of the company the principal and registered office of the company in New Jersey be established and maintained at No. 525 Main Street, East Orange.

That a sign with the company's name thereon be conspicuously displayed at the entrance of said office.

That a transfer book, in which transfers of stock may be registered, and a stock book, containing the names and addresses of the stockholders and the number of shares held by each, be kept at said office, open to the inspection of any stockholder during business hours.

That any stockholder of the company shall be entitled to a

list of the stockholders with their addresses and the number of shares held by each, upon prepayment to the registered agent of a reasonable fee to be fixed by it for making the same.

That the New Jersey Registration & Trust Company be and hereby is appointed the agent of this company in charge of said office and books, and that process against this company may be served upon said trust company.

That said trust company be and hereby is authorized to register transfers of stock.

The secretary was ordered to send a copy of the foregoing resolution, duly certified by him under the corporate seal, to .

The secretary presented and read a waiver of notice of assessment and of the time and place of payment thereof, signed by all the incorporators.

The board of directors were authorized to assess the stock subscribed by the said incorporators one hundred per cent., payable as and when called for by the board of directors.

Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

RESOLVED, that the board of directors be and they hereby are authorized to issue shares of the capital stock of this company to the full amount authorized by the certificate of incorporation, in such amounts from time to time as shall be determined by the board and as may be permitted by law, and in their discretion to accept in full or part payment of any share or shares such property as the board may determine shall be necessary for the business of the company.

Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preambles and resolutions were adopted:

WHEREAS, ha offered to sell this company property as follows:

[Insert description of property.]

in consideration of the issue of stock of this company to the amount of dollars (\$), par value, and

WHEREAS, it appears to the stockholders that such property is necessary for the business of this company, and that the same is of the value of dollars;

RESOLVED, that the board of directors of this company be and they are hereby authorized, in their discretion, to purchase the property above mentioned for the said price and to issue said stock in payment thereof.

On motion the meeting adjourned.

A true copy of each of the following papers referred to in the foregoing minutes is appended to the minutes of this meeting:

Certificate of incorporation and certificate of secretary of state as to filing same.

By-laws.

Waiver of notice of this meeting.

Proxies voted on at this meeting.

Oath and report of inspectors.

Transfers of subscription.

Waiver of notice of assessment.

Secretary of the Meeting.

Form 381.

[Section 16.]

**WAIVER OF NOTICE OF MEETING OF INCORPORATORS
AND SUBSCRIBERS.**

We, the undersigned, incorporators and subscribers to the stock of the _____ Company, a corporation under the laws of the State of New Jersey, hereby waive notice of the time, place and purpose of the first meeting of the corporation, and fix the day of _____, 190____, at _____ o'clock in the _____ noon, as the time, and the registered office of the company, 525 Main Street, East Orange, N. J., as the place of said meeting.

And we hereby waive all the requirements of the statutes of New Jersey as to notice of said meeting, and publication thereof; and consent to the transaction of such business as may come before said meeting.

Dated _____

Form 382.

[Section 17.]

PROXY—MEETING OF INCORPORATORS AND SUBSCRIBERS.

The undersigned, subscriber to _____ shares of stock of the _____ Company, hereby appoints _____ as proxy, with full power of substitution and revocation, to vote for and on behalf of the undersigned at the first meeting of the corporation to be held _____, 190____, and at any adjournment thereof.

Witness my hand and seal this _____ day of _____, 190____. In presence of:

[L. s.]

Form 383.

TRANSFER OF SUBSCRIPTION.*

The undersigned, for good and valuable considerations received, has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto the right, title and interest of the undersigned as a subscriber to and an incorporator of the _____ Company, to the extent of _____ shares of the capital stock thereof, and hereby requests and directs the said company to issue the certificate for said shares to the aforesaid transferee or his nominee or assigns.

This transfer to take effect upon the acceptance thereof by the company, the undersigned meanwhile retaining the right to vote upon said shares.

Dated

Witness:

[L. S.]

Form 384.

[See note to Section 40.]

INSPECTORS' OATH AND REPORT.

STATE OF NEW JERSEY, }
County of } ss.

and

being

severally sworn, upon their respective oaths do depose and say that they will faithfully, honestly and impartially perform the duties of inspectors of election at the election to be held this day for directors of the _____ Company, and a true report make of the same.

Subscribed and sworn to this _____ day
of _____, 190 _____, before me

Notary Public.

The undersigned, inspectors of election, report that having taken an oath impartially to conduct the election of directors of the above named company, we did receive the votes of the stockholders by ballot, and that the following persons received the number of votes set opposite their respective names, to wit:

For Directors.

Number of Votes.

Dated

Inspectors.

*Validity affirmed, Manchester St. R. R. Co. v. Williams, 52 Atl. Rep., 461.

Form 385.

[See note to Section 22.]

WAIVER OF NOTICE OF ASSESSMENT.

We, the undersigned, hereby waive thirty days' notice of the time and place of the payment of our respective subscriptions to the capital stock with which the Company begins business, and also waive all the requirements of the laws of New Jersey as to notice of assessment and payment thereof, and we agree to pay the same to the treasurer of the company in such amounts and at such time or times as the board of directors may require.

Dated

Form 386.

MINUTES OF FIRST MEETING OF DIRECTORS.

The first meeting of the board of directors was held at
on the day of , at M.

Present, Messrs. (*Insert names of directors present*), constituting
a quorum of the board.

Mr. was chosen temporary chairman
and Mr. was appointed secretary of
the meeting.

The secretary presented and read a waiver of notice of the
meeting, signed by all the directors, and the same was ordered
filed.

The minutes of the first meeting of incorporators were read and
approved.

The following gentlemen were duly elected officers of the com-
pany to serve for one year and until their successors are elected
and qualify:

President:

Vice-President:

Secretary:

Treasurer:

The president thereupon took the chair.

It was ordered that the secretary take the oath of office and
subscribe the written oath in the form presented at this meeting.
The secretary thereupon took and subscribed the oath and entered
upon the discharge of his duties.

It was ordered that the treasurer give a bond in the sum of

dollars, in the form presented at this meeting, which was approved by the board, and submit said bond to the board for approval as to the sufficiency of the surety.

The treasurer thereupon presented his bond signed by himself as principal and by _____ as surety, and the same was approved and ordered to be filed.

Upon motion, duly seconded, it was

[L. S.] RESOLVED that the seal presented at this meeting, an impression of which is directed to be made in the margin of the minute book, be and the same hereby is adopted as the seal of this corporation.

RESOLVED that the president and treasurer be and they hereby are authorized to issue certificates of stock in the form submitted to this meeting.

RESOLVED that the stock book and transfer book presented at this meeting be and the same hereby are adopted as the stock book and transfer book, and the secretary is hereby directed to send the same to the registered office, to be kept there as required by law.

Upon motion, duly made and seconded, it was

RESOLVED that the treasurer be, and he hereby is authorized to open a bank account in behalf of the company with the _____ Bank of _____

FURTHER RESOLVED that until otherwise ordered said bank be, and hereby is authorized to make payments from the funds of this company on deposit with it, upon and according to the check of this company signed by its _____

Upon motion, duly made and seconded, it was

RESOLVED that an office of the company be established and maintained at _____, in the City of _____, State of _____, and that meetings of the board of directors from time to time may be held either at the registered office in New Jersey, or at such office in the City of _____ or elsewhere, as the board of directors shall from time to time order.

Upon motion, duly made and seconded, it was

RESOLVED that this company accept the offer of _____ to sell to this company the property described in the draft agreement presented at this meeting, and the board of directors do hereby adjudge and declare that said property is of the fair value of _____ dollars, and that the same is necessary for the business of this company.

FURTHER RESOLVED that the draft agreement for the sale of said property presented at this meeting be, and the same hereby is approved and the _____ and _____ of the company are hereby authorized and directed to execute said agreement in the name and on the behalf of this company and to affix the corporate seal thereto.

FURTHER RESOLVED that the president and treasurer be, and they hereby are authorized and directed to issue certificates of the full paid capital stock of this company to the aggregate amount of dollars as provided in said agreement.

Upon motion, duly made and seconded, it was

RESOLVED that an assessment of one hundred per cent. be levied upon the shares of stock subscribed by the incorporators, as evidenced by the certificate of incorporation.

FURTHER RESOLVED that payment of said subscriptions and assessment be deemed to be made by the property agreed to be sold to the company as set forth in the preceding resolution, it having been agreed between the vendor and the incorporators that the stock to be issued to the vendor and his nominees under said agreement should include the stock subscribed by the incorporators.

Upon motion, duly made and seconded, it was

RESOLVED that the proper officers of this company be, and they hereby are authorized and directed in behalf of the company, and under its corporate seal, or otherwise, to make and file the certificate or statement required by law to be filed in any state in which the officers of the company shall find it necessary to file the same to authorize the company to transact business in such state.

The secretary was ordered to prepare, have executed by the proper officers, and cause to be filed in the office of the Secretary of State of New Jersey the report of officers, directors, etc., required by Section 43 (as amended) of "An Act Concerning Corporations (Revision of 1896)," of New Jersey.

On motion the meeting adjourned.

A true copy of each of the following papers referred to in the foregoing minutes is appended to the minutes of this meeting:

Waiver of notice of this meeting.

Secretary's oath.

Treasurer's bond.

Form of stock certificate.

Report to Secretary of State.

Agreement.

Form 387.

WAIVER OF NOTICE—FIRST MEETING OF THE BOARD OF DIRECTORS.

We, the undersigned, directors of the _____ Com-
pany, a corporation under the laws of New Jersey, hereby waive
notice of the time and place of the first meeting of the board of
directors, and of the business to be transacted at said meeting.

We designate the _____ day of _____, 19____, at

SECRETARY'S OATH; TREASURER'S BOND.

603

o'clock in the noon as the time, and
as the place of said meeting; the purpose of said meeting being
the election of officers, the authorization of the issue of the stock
of the company, the authorization of the purchase of property nec-
essary for the business of the company, and the transaction of
such other business as the board may deem proper.

Dated

Form 388.

[Section 13.]

SECRETARY'S OATH.

STATE OF
COUNTY OF

} ss.

the secretary of the Company, being by me duly
sworn, upon his oath deposes and says that he will faithfully dis-
charge the duties of secretary of the aforesaid company to the best
of his skill and ability.

Subscribed and sworn to before me }
this day of , 191 . }

Form 389.

[Section 13.]

TREASURER'S BOND.

Know all men by these presents, that the undersigned, as princi-
pal and surety, respectively, are held and firmly bound unto the
Company, its successors and assigns, in the sum
of dollars (\$), lawful money of the United
States, to be paid to said company, its successors and assigns, for
which payment, well and truly to be made, we bind ourselves, our
executors and administrators, jointly and severally, firmly by these
presents.

In witness whereof we have nereunto set our hands and seals
this day of , 191 .

The condition of the above obligation is that

Whereas (*name of treasurer*), the principal, has been duly elected
and is about to enter upon the duties of his office as treasurer of
the above-named company,

Now, therefore, if he shall in all respects fully and faithfully
discharge his duties as such treasurer, so long as he shall hold the

said office or continue therein during the term for which he is now or may hereafter be elected, appointed, or hold over, and also, if, in case of his death, resignation, disqualification or removal from office, all the books, papers, accounts, vouchers, money and other property of whatever kind in his possession belonging to the company shall be forthwith restored to the company, then this obligation is to be void, otherwise to be in full force and virtue.

Signed, sealed and delivered
in the presence of

Principal.
Surety.

[L. S.]
[L. S.]

Form 390.

AGREEMENT FOR THE PURCHASE OF PROPERTY.

AN AGREEMENT made this day of , 191 ,
by and between (hereinafter called the "vendor ,")
of the first part, and , corporation organ-
ized under the laws of New Jersey (hereinafter called the "com-
pany,") of the second part.

WHEREAS the vendor the owner of the
property and rights hereinafter described; and

WHEREAS the company has been duly organized with an authorized
capital stock of \$, divided into shares of
preferred stock and shares of common stock of the par
value of \$ each; and

WHEREAS the board of directors of the company have ascertained,
adjudged and declared that the said property and rights are of
the fair value of dollars (\$), and that the
acquisition thereof is necessary for the business of the company to
carry out its contemplated objects:

Now, THEREFORE, this agreement witnesseth:

I. That the vendor ha sold, assigned, transferred and
set over, and do hereby sell, assign, transfer and set over unto the
company, its successors and assigns, all right, title and
interest in and to the following described property, to wit:

[Insert description of property.]

II. The company hereby agrees, in consideration of said sale
and upon the delivery of said property to it, to issue to the vendor
and nominees as hereinafter provided, and to such other nomi-
nees as the vendor shall in writing hereafter direct, at such times
and in such amounts as they shall respectively direct, certificates
of stock of the company to the aggregate amount of
shares, and said shares shall be deemed to be and are hereby declared
to be full-paid shares and not liable to any further call, and the

holders of such stock shall not be liable to any further payment thereon.

III. Said stock shall be issued as follows:

To the vendor

shares,

[Insert names of all persons to whom certificates are to be issued for account of the vendor.]

IV. The delivery of the certificates for said shares to the above-named parties and their respective receipts for the same shall be a full discharge of each of the parties hereto to the extent thereof.

V. The vendor hereby covenant and agree with the company, upon the request and at the cost of the company, to execute and do all such further assurances and things as shall reasonably be required by the company for vesting in it the property and rights agreed to be hereby sold, and giving to it the full benefit of this agreement.

WITNESS the hand and seal of the vendor and the corporate seal of the company, attested by the signatures of its officers thereunto duly authorized, the day and year first above written.

In presence of:—

[L. S.]

COMPANY.

[CORPORATE SEAL.]

By

ATTEST:

Form 391.

DIRECTION AS TO ISSUANCE OF STOCK.

To the president and treasurer of

Company.

Gentlemen:—You are hereby requested to issue certificates of capital stock of the company, authorized to be issued to me by resolution of the stockholders of the said company at a meeting held , said issue having been ratified and confirmed by resolution of the board of directors, adopted at a meeting held , to the following named persons in the amounts set opposite their respective names.

[Insert names and addresses of persons to whom certificates are to be issued, with number of shares.]

Dated

Form 392.

CERTIFICATE TO BE FILED WITH BANK.

“RESOLVED that the treasurer be, and he hereby is authorized to open a bank account in behalf of the company with the .

“FURTHER RESOLVED, that until otherwise ordered, said bank be, and hereby is authorized to make payments from the funds of this company on deposit with it, upon and according to the check of this company signed by its .”

I, _____ secretary of the _____ Com-
pany, hereby certify that the foregoing is a full and true copy of
a resolution of the board of directors of said company passed at a
duly convened meeting of said board held on the _____ day of
_____, 190____, as taken from and compared with the original
resolutions as recorded in the minute book of the company.

WITNESS my hand and the seal of the company, this _____ day
of _____, 19____.

{ CORPORATE
SEAL. }

Secretary.

ASSESSMENT AND PAYMENT OF CAPITAL STOCK.

Form 393.

[Section 22.]

RESOLUTION OF DIRECTORS MAKING A CALL.

(To be entered in minute book.)

RESOLVED that a call be and the same is hereby made of \$
per share, payable in respect of the amount unpaid upon the shares
of capital stock of this company, and that the same be payable to
the treasurer of the company on or before the _____ day of
_____, at the office of the company.

Form 394.

[Section 22.]

NOTICE OF ASSESSMENT OF STOCK.

Notice is hereby given that by resolution of the board of
directors, duly authorized by the stockholders, an assessment of
_____ per cent. on the capital stock of the
Company, is now called for, payable to _____ treasurer,
No. _____ street, on or before
19____.

Checks should be drawn to the order of the treasurer.

By order of the board,

Secretary.

[Unless the subscribers waive such notice, it is necessary to give

thirty days' notice of the time and place of each instalment as called by the directors. This notice may be served on the subscribers personally or by mail, or it may be published in a newspaper in the county where the principal office is located.]

Form 395.

[Sections 23, 24.]

NOTICE OF SALE OF STOCK FOR NON-PAYMENT OF ASSESSMENTS.

SALE OF STOCK OF THE COMPANY.

Notice is hereby given that pursuant to an order of the board of directors, and in pursuance of the statute in such case made provided, the undersigned, as treasurer of the Company, will sell at public auction on the day of at o'clock in the noon, at shares of the capital stock of said company, standing in the name of , or so many of said shares as will pay \$, being the amount of unpaid assessments on said shares now due from said , and also the interest thereon from to the date of sale, and all necessary incidental charges.

\$ has been paid the company on each of said shares.

An assessment of \$ is now due on each of said shares, which assessment the purchaser must forthwith pay on each share in addition to the amount of his bid.

Dated

Treasurer.

[This notice must be printed once a week for three weeks, and mailed to the delinquent stockholder prior to the first publication.]

Form 396.

[Sections 25, 43a.]

CERTIFICATE OF PAYMENT OF CAPITAL STOCK

of the Company.

The location of the principal office in this state is at No.

street, in the of

, County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

CERTIFICATES OF STOCK.

In accordance with the provisions of "An Act Concerning Corporations (Revision of 1896)," we, _____ president, and _____, secretary of the _____ Company, a corporation of the State of New Jersey, do hereby certify that _____ dollars, being the [amount of capital stock with which said company commenced business, or, total amount of capital stock of said company] as authorized by its certificate of incorporation filed in the Department of State, on the _____ day of _____, A. D. 19____, has been fully paid in; _____ dollars thereof by the purchase of property and _____ dollars thereof in cash.

WITNESS our hands the _____ day of _____, A. D. 19____. President. Secretary.

STATE OF _____ } ss.
COUNTY OF _____ }

and _____ president,
the _____ secretary of
_____ Company
being severally duly sworn, on their respective oaths depose and say that the foregoing certificate by them signed is true.
Subscribed and sworn to before _____
me, this _____ }
day of _____ A. D. 19____ }

CERTIFICATES OF STOCK.

Form 397.

[Section 19.]

CERTIFICATE OF COMMON STOCK.

INCORPORATED AND REGISTERED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

Capital Stock _____ \$
[Number] _____ [Shares]
The _____ Company.

THIS IS TO CERTIFY, that _____ is the registered holder of _____ shares of the capital stock of this company, transferable only on the books of the company by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

609

[SEAL.]

Shares, \$100 each.

[Sections 18, 19.]

[Shares]

4

The

Company.

This stock is part of an issue amounting in all to \$
par value, authorized by the certificate of incorporation of the com-
pany, filed in the office of the Secretary of State of the State of
New Jersey, on the day of 19

This certificate entitles the holder thereof to receive, and the company is bound to pay, a fixed yearly dividend of _____ per centum per annum, payable half-yearly, before any dividends shall be set apart or paid on the common stock, and the dividends on the preferred stock are cumulative. The preferred stock is subject to redemption at par on the _____ day of _____, 19____.

The holders of the preferred stock may choose exclusively directors, and the holders of the general stock may choose exclusively directors of the company.

WITNESS the seal of the company and the signatures of its president
and treasurer this day of , 19 .
[SEAL.]

Shares, \$100 each.

* Must be at least three years from the date of issue (§18).

ASSIGNMENT ON BACK OF CERTIFICATE.

Dated, _____, 19 ____.

In the presence of

SEPARATE ASSIGNMENT OF SHARES OF STOCK

for value received,

shares of the

company standing in my

_____, the _____ day of _____, 19____.

Signed, sealed and

[L. S.]

**AGREEMENT PLACING SHARES OF STOCK IN TRUST TO
BE SOLD FOR THE BENEFIT OF COMPANY.**

day of

A. D. 19 , by and between parties of the

first part, and _____, (hereinafter called

the "trustee"), party of the second part.

WHEREAS the parties of the first part are the owners of certain full paid shares of the capital stock of the company, a corporation organized and doing business under the laws of the State of New Jersey; and

WHEREAS the said parties of the first part are desirous of providing said company with funds to be used by it as working capital in carrying on its business and thereby enhancing in value the other shares held by the parties of the first part;

Now, THEREFORE, in consideration of the premises and of the sum of one dollar in hand paid by the trustee to each of the parties of the first part, the receipt of which is hereby acknowledged, it is hereby agreed by and between the parties of the first part and the trustee as follows:

I. The parties of the first part do hereby sell, assign, transfer and set over unto the trustee full paid shares of the capital stock of the company to be sold by the trustee at the prices and on the terms and conditions and in such amounts and proportions as a majority of the said parties of the first part (or the board of directors of the said company) shall from time to time in writing order and direct. The proceeds of such sale or sales, after deducting the reasonable expenses of the trustee in making such sale or sales, shall be turned over to the treasurer of the said company, for the sole and exclusive use and benefit of the said company.

II. The trustee hereby agrees to vote upon said stock so standing in his name on the books of the company at all meetings of stockholders of the said company, in the manner as directed in writing by a majority of the said parties of the first part.

III. In case any dividends are or may be paid to the trustee by the said company, on the shares held by him as evidenced by the books of the company, and in accordance with the provisions of this agreement, the said trustee shall divide the same pro rata among the said parties of the first part, their executors or administrators.

IV. This agreement shall remain in force until the amount so paid over to the company by the trustee as hereinbefore provided shall amount in the aggregate to the sum of dollars, and thereupon, the trust hereby created shall cease and determine, and the trustee shall reassign and transfer to the parties of the first part, pro rata, the shares then remaining unsold, together with such proceeds of sales as shall not have been paid over to the company as hereinabove provided.

V. The trustee shall be paid for his services hereunder a commission of per cent. on all moneys collected by him on account of such sale or sales as hereinabove provided, and said trustee shall also be entitled to be reimbursed his just and reasonable expenses and disbursements in carrying out said trust.

WITNESS the hands and seals of the parties of the first part and the hand and seal of the trustee the day and year first above written.

WITNESS:

Form 402.

[Section 111.]

BOND OF INDEMNITY TO BE GIVEN WHERE NEW CERTIFICATE IS ISSUED IN LIEU OF LOST CERTIFICATE.

KNOW ALL MEN BY THESE PRESENTS, that we, _____, of _____ and _____, of _____ are jointly and severally held and firmly bound unto _____ COMPANY, in the penal sum of _____ dollars, to be paid to the said _____ COMPANY, its successors and assigns, for which payment well and truly to be made, we do bind ourselves, our executors, administrators and assigns, firmly by these presents.

WITNESS our hands and seals, this _____ day of _____, A. D. 19 ____.

The conditions of this obligation are as follows:

WHEREAS said _____ COMPANY has issued to the said _____ a certificate for _____ shares of the _____ stock of said _____ Company, being a duplicate of certificate number _____ for a like number of shares of said stock heretofore issued to said _____, and which said certificate is alleged to have been lost:

Now, THEREFORE, if we shall indemnify and save harmless the said _____ Company against any and all actions, proceedings, claims and demands, and any and all expenses in respect thereof, which may be brought or made against said company in consequence of its having issued such new certificate as aforesaid, or in consequence of its permitting at any time hereafter a transfer of said shares, or any of them, without the production of the original certificate above referred to, then this obligation shall be null and void, otherwise to remain in full force and effect.

In the presence of:

[L. S.]

[L. S.]

Form 403.

[See notes to Section 36.]

VOTING TRUST AGREEMENT.

THIS AGREEMENT, made this _____ day of _____, 19 ____, by and between the undersigned stockholders of the _____ COMPANY

(hereinafter called "the subscribers"), parties of the first part, and (hereinafter called "the trustees"), parties of the second part, WITNESSETH: That for a valuable consideration, the receipt whereof is hereby acknowledged, and the mutual covenants and agreements hereinafter contained:

The parties of the first part hereby assign and transfer unto the parties of the second part the number of shares of stock of the _____ Company, a corporation of the State of New Jersey, set opposite their respective names, to be held by said trustees until _____, 19____, in trust, however, for the respective subscribers, their personal representatives and assigns, and subject to the following terms and conditions:

I.

The said trustees shall jointly vote all of the said stock so held by them at any and all meetings of the stockholders, and at all elections of directors during such period as though the said trustees were the absolute owners of said stock.

II.

The vote of said trustees upon said stock at every meeting of the stockholders shall be the vote of a majority of the trustees in office.

III.

In case of the death or resignation of any of the said trustees, the surviving trustees may elect his successor, who shall have and exercise hereunder the same powers and duties as his predecessor in office.

IV.

Said trustees shall prepare and deliver to each of the subscribers a suitable certificate signed by such of their number as they shall designate, showing the amount of stock held by the trustees for the benefit of such subscriber, which certificate shall be divisible and transferable, but only upon books which shall be kept by said trustees, and upon surrender of such certificates and payment of a proper clerical fee. The trustees may appoint a transfer agent for the trustee certificates and fix a proper compensation for its services. The trustees may at all times treat the record owner of the trustee certificates as the owner thereof.

V.

The said trustees shall receive the dividends that may be declared from time to time upon the stock so transferred to them by the subscribers, and shall, without charge or compensation, immediately pay out the same to the holders of the trustee certificates as their respective interests may from time to time appear.

614 MINUTES, STOCKHOLDERS' ANNUAL MEETING.

VI.

On _____, 19____, the trustees shall assign and transfer to the then holders of the trustee certificates the amount of stock to which each holder thereof shall be entitled upon surrender of the trustee certificates.

VII.

The trustees accept the trust hereby created and covenant and agree that they will at all times vote the said stock and exercise their duties hereunder in such manner as they shall consider to be for the best interests of the stockholders of the Company, and will permit any stockholder of the Company to become a subscriber hereto.

IN WITNESS WHEREOF the subscribers have hereunto set their hands, and opposite their names the number of shares of stock which they so assign and transfer to the trustees, and the trustees have hereunto set their hands and seals the day and year first above written.

Name.

No. of Shares.

ANNUAL AND SPECIAL MEETINGS.

Form 404.

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS.

The annual meeting of stockholders was held at the office of the company, No. _____ Street, _____, N. J., on the _____ day of _____, 19____, at _____ M.

The meeting was called to order by Mr. _____, who, upon motion, was unanimously chosen chairman, and Mr. _____ was appointed secretary of the meeting.

The secretary then read the roll of the stockholders entitled to vote at this meeting, with the following result:

The following stockholders were present in person:

NAME.

NO. OF SHARES.

The following stockholders were represented by proxy:

NAME.

NAME OF PROXY.

NO. OF SHARES.

being a majority in interest of all the stockholders of the company.

The proxies presented were ordered to be filed with the secretary of the meeting.

The secretary presented and read a copy of the notice of the meeting, together with proof of the due mailing thereof, to each stockholder of the company, at least _____ days before the meeting, as required by the by-laws.

MINUTES, STOCKHOLDERS' ANNUAL MEETING. 615

The transfer book and the stock book of the company, together with a full, true and complete list in alphabetical order of all the stockholders entitled to vote at the ensuing election, with the residence of each and the number of shares held by each, were produced, and remained during the election open to inspection.

Upon motion, duly made and seconded, the reading of the minutes of the last preceding meeting was .

Upon motion, duly seconded, Messrs. and (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

Upon motion, duly seconded, the meeting proceeded to the election of directors, by ballot, in accordance with the by-laws, and the polls were opened at M., and the stockholders prepared their ballots and delivered them to the inspectors.

The annual statement of the directors was presented and read and ordered to be received and filed with the secretary.

The report of the for the past year presented and read and ordered to be received and filed with the secretary.

[Here insert record of any other business transacted.]

The polls having remained open an hour were closed, and the inspectors presented their report in writing, showing that the following gentlemen (stockholders of the company) had received the greatest number of votes: *[Insert names.]*

The chairman thereupon declared the above-named gentlemen duly elected directors of the company, to hold office until the next annual election and until their successors are elected and qualify.

The secretary was directed to insert in the minute book, for the purpose of reference, a copy of each of the following papers:

- (1) Notice of the meeting and proof of service thereof.
- (2) List of stockholders produced at the meeting.
- (3) Form of proxy.
- (4) Report of
- (5) Inspectors' oath and report.

No further business coming before the meeting, upon motion, duly seconded, the same adjourned.

, Secretary of the meeting.

Form 405.

NOTICE OF ANNUAL MEETING.

THE ANNUAL MEETING of the stockholders of the Company will be held on the day of , 19 , at o'clock in the noon, at the principal office of the com-

AFFIDAVIT OF NOTICE; PROXY.

pany, street, , New Jersey, for the purpose of electing a board of directors and receiving and acting upon the reports of the officers [*insert any special business to be transacted*], and for the transaction of such other business as may properly come before the meeting.

In accordance with the laws of the State of New Jersey, no stock can be voted on which has been transferred on the books of the company within twenty days next preceding this election.

Dated, , 19 .

Secretary.

Form 406.

AFFIDAVIT OF MAILING NOTICES OF MEETING.

STATE OF }
COUNTY OF } ss.

being duly sworn, deposes and says that he is the secretary of the Company, a corporation of the State of New Jersey; that on the day of , 19 , he caused a notice of the meeting of the stockholders of said company, a copy of which is hereto annexed, to be mailed, in a sealed wrapper, postage prepaid, addressed to each stockholder of record of said company, at his address as the same appeared on the books of the company.

Sworn and subscribed to }
before me this }
day of , 19 . }

Form 407.

[Section 17.]

PROXY—STOCKHOLDERS' MEETING.

KNOW ALL MEN BY THESE PRESENTS,

That I, the undersigned, being the owner of Company, do shares of the capital stock of the my true and hereby constitute and appoint lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name, as my proxy, at the annual [*or, special*] meeting of the stockholders of the said company, to be held at the company's principal office, Street, N. J., on the day of , 19 , and on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be

entitled to cast, hereby granting the said attorney full power and authority to act for me and in my name at the said meeting or meetings, in voting for directors of the said company or otherwise, and in the transaction of such other business as may properly come before the meeting, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may do in my place, name and stead.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this
day of , 19 .

Witness:

[L. S.]

Form 408.

[Section 46.]

CALL OF MEETING BY THREE STOCKHOLDERS.

WHEREAS, a legal meeting of the stockholders of the Company cannot be otherwise called, the undersigned, three stockholders of said company, having voting powers, do hereby call a meeting of said stockholders to be held at the registered office of the company in New Jersey on the day of , at o'clock in the noon, for the purpose of *[state object of the meeting]*.

Dated,

REPORTS.

Form 409.

[Sections 43, 43a.]

ANNUAL REPORT TO SECRETARY OF STATE.

The Company, organized and registered under the laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

FIRST.

The name of the corporation is

SECOND.

The location of the registered office is
and

is the agent therein, in charge thereof, upon whom process against the corporation may be served.

THIRD.

The character of the business is
and as otherwise specified in the certificate of incorporation.

FOURTH.

The amount of the authorized capital stock is \$
The amount actually issued and outstanding is \$

FIFTH.

The names and addresses of all the directors and officers and the
time when the term of office of each expires are as follows:

Names of Directors.	P. O. Address.	Expiration of Term.
---------------------	----------------	---------------------

Officers.

President:
Vice-president:
Treasurer:
Secretary:

SIXTH.

The next annual meeting of the stockholders for the election
of directors is appointed to be held on the

SEVENTH.

The name of the corporation has [or not] been at all times displayed at the entrance of its registered office in this state, and the corporation has [or not] kept at its registered office in this state a transfer book, in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law.

IN WITNESS WHEREOF, this report is signed by two of the directors
of the said corporation this day of , 19 .

[For signing of report by other officers see Section 43, ante.

For foreign corporations, the above form may be used, omitting "Seventh."']

Form 410.

[Section 150.]

REPORT TO STATE BOARD OF ASSESSORS.

Report of the Company.

President.
Treasurer.
Secretary.

Date of incorporation.
Principal Office in New Jersey—
City or Town.
Street and Number.
Name of Agent in charge.

OFFICE STATE BOARD OF ASSESSORS.

TRENTON, NEW JERSEY.

This report must show existing conditions January 1, 19 . All of the following questions *must* be answered, and wherever the proper answer is "none," or "nothing," it should be so stated:

1. What is the amount of your capital stock authorized? \$
2. Into how many shares is it divided?
3. How many shares are fully paid, either in cash or by property purchased?
4. How many shares are partially paid?
5. What is the amount of your capital stock issued? \$
6. What is the nature of the business of your corporation?
7. Is your corporation engaged in manufacturing or mining?
8. If so, state where, *A.* In New Jersey.

City or town.

Street and number.

B. If in other places, state where.

City or town.

Street and number.

9. What is the *total amount* of your capital stock invested in manufacturing or mining? \$

10. What is the amount of your capital stock actually employed in manufacturing or mining in New Jersey? \$

11. What is the local assessed valuation for 19 , of your corporation's real and personal estate used in manufacturing or mining in New Jersey?

Real estate \$

Personal, \$

I, the undersigned, do hereby certify as [*President or Treasurer*] of the Company, that the foregoing return is correct and true.

[L. S.]

Address

Witness.

The above certificate is made in conformity with Section 3 of the act of April 18th, 1884, which provides that if any officer of any company required by this act to make a return, shall in such return make a false statement, he shall be deemed guilty of perjury.

Form 411.

PETITION FOR REVIEW OF ASSESSMENT.

[Section 162.]

To the STATE BOARD OF ASSESSORS, Trenton, New Jersey:

Gentlemen:—Your petitioner, the _____ Company, a corporation duly organized and existing under the laws of the State of New Jersey, hereby respectfully appeals from the assessment of state franchise tax, amounting to the sum of \$ _____, levied by your honorable board for the year _____ against your petitioner, and submits the following reasons why said tax is considered excessive and unjust:

Wherefore your petitioner prays your honorable board to review the assessment as aforesaid, and to adjust and amend the same in conformity with the facts herewith submitted.

IN WITNESS WHEREOF, the _____ Company hath, by its [President or Treasurer] hereunto set its hand and seal, this day of _____, 19 .

Witness.

[L. S.]

STATE OF

COUNTY. } ss.

_____ being duly sworn according to law, on his oath deposes and says that he is _____ of the _____ Company, and that the contents of the foregoing petition are correct and true, to the best of his knowledge and belief.

Sworn and subscribed before me }
this _____ day of _____, 19 . }

[The above certificate must be accompanied by an amended report to state board of assessors, and must be filed within three months after the assessment was made. See Section 162, p. 161. Also see Form 350, ante.]

AMENDMENTS AND CHANGES.

Form 412.

[Sections 26a, 43a.]

**AMENDED CERTIFICATE OF INCORPORATION BEFORE
PAYMENT OF CAPITAL.**

[Set out in full the body of the certificate of incorporation as desired to be amended, then add the following attestation clause]:

THE UNDERSIGNED, being all the incorporators of the _____ Company, a corporation organized under and in pursuance

of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)," the certificate of incorporations of which was duly recorded in the office of the clerk of the County of _____, New Jersey, on the day of _____, 19____, and duly filed in the office of the secretary of state of New Jersey, on the _____ day of _____, 19____, no part of the capital stock of said corporation having been paid in, do hereby, pursuant to the provisions of Section 1 of an act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An Act Concerning corporations (Revision of 1896),' approved April twenty-first, one thousand eight hundred and ninety-six," approved April 19, 1898, amend said certificate of incorporation so that the same shall read as hereinbefore set forth, and accordingly do hereunto set our hands and seals.

Dated _____, 19____.

[Add acknowledgment (Form p. 350); then add an affidavit as follows]:

STATE OF _____ }
COUNTY OF _____ } ss.

On this _____ day of _____ A. D. 19____, before the undersigned personally appeared _____, who being by me severally duly sworn did severally depose and say they are all of the original incorporators of the _____ Company as set forth in the foregoing certificate, and that no part of the capital stock of said _____ Company has been paid in.

Subscribed and sworn to before me }
at the city of _____, the }
day and year aforesaid. }

[The amended certificate should be first recorded in the office of the clerk of the county where the original certificate of incorporation was recorded, and then filed in the office of the secretary of state. If the principal office is changed to another county, record also in the county where the new principal office is located.]

Form 413.

[Sections 27, 28 43a.]

CERTIFICATE OF AMENDMENT OF CHARTER, INCREASE OF CAPITAL, ETC.

[This form may be used for changing the nature of the business, changing the name, increasing the capital stock, decreasing the capital stock, changing the par value of shares of the capital stock, changing the location of the principal office, extending the corporate existence, creating a class or classes of preferred stock, and

for making "such other amendment, change or alteration as may be desired." Section 27, p. 100, ante.]

COMPANY, a corporation of the State of New Jersey, by its President and Secretary, DOES HEREBY CERTIFY:

I. That the principal office of the company is at No. _____ Street, _____, New Jersey, and that the agent therein in charge thereof and upon whom process against the corporation may be served is _____

II. That the board of directors of said corporation, at a meeting duly convened and held on the _____ day of _____, 19____, passed a resolution declaring that the changes and amendments in the certificate of incorporation [or increase of capital stock, etc., as the case may be], hereinafter set forth, are advisable, and calling a meeting of the stockholders to take action thereon.

III. That a copy of said resolution of the board of directors is hereto appended.

IV. That thereafter, on the _____ day of _____, 19____, pursuant to such call of the board of directors, and upon notice given to each stockholder as provided in the by-laws, a special meeting of the stockholders of the company was held, at which meeting more than two-thirds in interest of each class of the stockholders having voting powers were present in person or represented by proxy, and that more than two-thirds in interest of each class of the stockholders having voting powers voted in favor of such changes and amendments [or, increase of capital stock, etc.], such changes and amendments being as follows:

The amendment of article _____ of said certificate of incorporation to read as follows:

[Here insert the article to be amended in full, as amended.]

V. That at said meeting of the stockholders the foregoing amendments were assented to in writing by more than two-thirds in interest of each class of the stockholders having voting powers, which said written assent is hereto appended.

VI. That _____ shares of common stock and _____ shares of preferred stock of said corporation are issued and outstanding.

IN WITNESS WHEREOF, the said _____ Company has caused this certificate to be signed by its president and its secretary, and its corporate seal to be hereto affixed this day of _____, 19____.

COMPANY,

President.
Secretary.

(Corporate Seal.)

RESOLUTION OF THE BOARD OF DIRECTORS.

“RESOLVED that it is advisable to amend article of the certificate of incorporation to read as follows:

[Insert same.]

[or to increase the capital stock of the company from dollars to dollars, etc.]

FURTHER RESOLVED, that a meeting of the stockholders to take action upon the foregoing resolution be called to be held at the principal office of the company, No. Street, N. J., on the day of , 19 , at M.”

Form 414.

ASSENT OF STOCKHOLDERS.

THE UNDERSIGNED, being more than two-thirds in interest of each class of the stockholders of the Company having voting powers, having at a meeting regularly called for that purpose voted in favor of the changes and amendments [or increase of capital stock, etc.] set forth in the above certificate do now pursuant to law give our written assent to such changes and amendments.

WITNESS our hands this day of A. D. 19 .
NAMES. No. OF SHARES.
PREFERRED. COMMON.

[Section 27, page 100, ante, requires the “written assent in person or by proxy, of two-thirds in interest of each class of stockholders” to be filed. Where the signing is by proxy, the usual practice is to write the name of the shareholder followed by the signature of the proxy. The certificate of amendment of the certificate of incorporation of the Chicago Junction Railways & Union Stock Yards Company, filed February 24, 1900, is a precedent for signing the assent by the proxy alone, omitting the names of the shareholders represented, writing opposite the signature the total number of shares represented.

The practice usually followed as to the signature of the stockholders discloses to the public the names and number of shares of the stockholders.

The statute does not in express language call for the names and number of shares of each of the assenting stockholders.]

PROOF.

STATE OF }
COUNTY OF } ss.

BE IT REMEMBERED, that on this day of , 19 , before me the subscriber, a personally appeared

secretary of the _____ Company, the corporation mentioned in and which executed the foregoing certificate, who, being by me duly sworn on his oath says, that he is such secretary and that the seal affixed to the said certificate is the corporate seal of said corporation, the same being well known to him; that _____ is president and signed said certificate and affixed said seal thereto and delivered said certificate by authority of the board of directors and with the assent of two-thirds in interest of each class of the stockholders having voting powers, as and for his voluntary act and deed and the voluntary act and deed of said corporation in the presence of deponent who thereupon subscribed his name thereto as witness.

And he further says that the resolution of the board of directors referred to in the said certificate, a true copy of which is appended to said certificate, was adopted at a meeting of said board of directors duly convened and held on the _____ day of _____, 19 ____.

And he further says that the written assent of stockholders appended to the foregoing certificate is signed by two-thirds in interest of each class of the stockholders having voting powers, either in person or by their severally duly constituted attorneys in fact thereunto duly authorized in writing.

Subscribed and sworn to before
me the day and year afore-
said. }

[For full form of certificate of amendment of certificate of incorporation, see Form 13.]

Form 415.

[Sections 25, 43a.]

CERTIFICATE OF PAYMENT OF ADDITIONAL CAPITAL STOCK

of the _____ Company.

The location of the principal office in this state is at No. _____

Street, in the _____ of

, County of _____.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____.

In accordance with the provisions of "An Act Concerning Corporations (Revision of 1896)," we, _____, president, and _____, secretary of the _____ Company,

a corporation of the State of New Jersey, do hereby certify that

dollars, being the total amount of additional capital stock of said company as authorized by the certificate of increase of capital stock and assent of stockholders thereto, filed in the Department of State, on the day of A. D. 19 , has been fully paid in; dollars thereof by the purchase of property and dollars thereof in cash.

Witness our hands the day of , A. D. 19 .
President.
Secretary.

[This form of certificate is used where there is an increase of capital stock beyond the total amount authorized by the certificate of incorporation.]

STATE OF }
COUNTY OF } ss.

and president,
the secretary of
Company,
being severally duly sworn, on their respective oaths depose and say that the foregoing certificate by them signed is true.

Subscribed and sworn to before }
me, this }
day of , A. D. 19 . }

Form 416.

[Sections 27, 28, 43a.]

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION.

[Another Form.]

[Insert certificate of incorporation in full, as amended.]

The Company, a corporation organized under an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," for the purpose of amending its certificate of incorporation pursuant to the provisions of said act, does hereby certify:

1. That at a special meeting of the board of directors of said company duly convened and held on the day of , 19 , a resolution was passed declaring it to be advisable to amend the certificate of incorporation of said company so that as amended the same shall read as hereinabove set forth, and calling a special meeting of the stockholders of the company, to be held on , 19 , at M., at the registered office, for the purpose of taking action upon said resolution.

2. That pursuant to said resolution of the board of directors, a meeting of the stockholders of said company was duly convened and held on said day of , 19 , at M., at the registered office of the company, at which more than two-thirds in interest of each class of the stockholders having voting powers, that is to say, more than two-thirds in interest of the preferred stockholders and of the common stockholders respectively voted in favor of such amendment.

3. That the amendment so declared to be advisable by resolution of the board of directors and so voted for by the stockholders as aforesaid, was the amendment of the certificate of incorporation in its entirety, saving only the acknowledgment attached to said certificate of incorporation in which no amendment was made, so that as amended the same shall read as hereinabove set forth.

4. That the registered office of the company in the State of New Jersey is located at No. Street, in the city of , in the county of , and that the agent therein and in charge thereof, upon whom process against the corporation may be served is .

IN WITNESS WHEREOF, the said Company has caused this instrument to be signed by its president and secretary, and its corporate seal to be hereto affixed this day of , 19 .

FOR THE COMPANY.

President.

{ CORPORATE
 SEAL. }

Secretary.

Form 417.

ASSENT OF STOCKHOLDERS.

The undersigned, stockholders of the Company, having at a meeting regularly called for the purpose voted in favor of amending the certificate of incorporation of said company, as set forth in the foregoing certificate, do now, pursuant to the statute, hereby give our written assent to said amendment and decrease.

Witness our hands this day of A. D. 19 .
[Add acknowledgment as in Form p. 350.]

Form 418.

[Section 28a.]

CERTIFICATE OF CHANGE OF LOCATION OF THE PRINCIPAL OFFICE.

RESOLUTION OF DIRECTORS.

“The board of directors of the _____ Company,
a corporation of New Jersey, on this _____ day of
A. D. 19____, do hereby resolve and order that the
location of the principal office of this corporation within this state
be, and the same hereby is, changed from
in the county of _____, to No. _____ street,
in the _____ county of _____.”

The name of the agent therein and in charge thereof, upon
whom process against the corporation may be served, is _____.

CERTIFICATE OF CHANGE.

The _____ Company, a corpora-
tion of New Jersey, doth hereby certify that the foregoing is a true
copy of a resolution adopted by the board of directors by a
vote of the members thereof at a meeting held as therein
stated.

IN WITNESS WHEREOF, said corporation has caused this certificate
to be signed by its president and secretary, and its cor-
[L. s.] porate seal to be hereto affixed, the _____ day of
_____, A. D., 19____.

President.
Secretary.

Form 419.

[Section 18a.]

CONVERSION OF PREFERRED STOCK INTO BONDS.

51 NEWARK STREET,

HOBOKEN, NEW JERSEY, 19th May, 1902.

United States Steel Corporation, a corporation of the State of
New Jersey, and Charles M. Schwab, the president, and Richard
Trimble, the secretary, of said corporation, do hereby certify as
follows:

FIRST.—That we are the president and secretary, respectively, of
the United States Steel Corporation.

SECOND.—That at the twentieth meeting thereof held April 1, 1902,
the board of directors of the said corporation did duly adopt the
following resolutions, declaring it to be advisable that action be
taken by the corporation as therein set forth—to wit:

RESOLVED, That the United States Steel Corporation hereby accepts and approves the provisions of the act of the Senate and General Assembly of the State of New Jersey, approved March 23d, 1902, being Senate Bill No. 137, introduced by Mr. Reed, as amended and passed March 27, 1902, and particularly the second section of said act permitting and providing for the redemption and retirement of the preferred stock out of bonds or the proceeds of bonds.

RESOLVED, That the board of directors of the United States Steel Corporation deems it advisable, and hereby declares it to be advisable, that to the extent that holders thereof shall consent thereto, 2,000,000 shares of the preferred stock of the corporation now outstanding shall be redeemed and be retired out of bonds or out of the proceeds of bonds of the United States Steel Corporation, which bonds shall be of the character set forth in the next resolution.

RESOLVED, That bonds be issued by the United States Steel Corporation which shall bear interest at the rate of five per cent. per annum, payable semi-annually, and the principal whereof shall be payable in sixty years from the date thereof, and at the pleasure of the company shall be redeemable at 110 upon any interest day after the expiration of ten years from the date thereof, out of the proceeds of a sinking fund to be provided by an annual contribution equal to one million dollars per annum, and the accumulations of interest thereof, or out of any other funds of the corporation.

Such bonds shall be part of a total issue for an aggregate principal sum not exceeding \$250,000,000, and shall be secured by a mortgage lien and pledge upon all the property, and upon the shares of the capital stock of other corporations (not being directors' qualifying shares), which now are owned or held, or which hereafter may be acquired by the United States Steel Corporation, which lien and pledge shall be next and similar to the lien thereof heretofore created for the security of \$304,000,000 of the bonds of this corporation issued under and secured by its indenture with the United States Trust Company, of New York, dated April 1, 1901. Such bonds and such mortgage, lien or pledge shall be in such form as shall be determined by the board of directors and approved by the general counsel, after the creation and issue thereof shall have been authorized by the stockholders at a meeting to be called specially for that purpose.

A reasonable opportunity shall be offered by public advertisement to the preferred stockholders of record upon a date to be fixed and to be stated in such offer approximately to the extent of forty per cent. of their several holdings ratably to subscribe for, and to take at par \$200,000,000 of said bonds, and to make payment therefor in preferred stock at par, and also an opportunity approxi-

mately to the extent of ten per cent. of their several holdings ratably, to subscribe for and to take for cash at par \$50,000,000 of such bonds.

RESOLVED, That whether or not the stockholders shall assent to, and approve of, the foregoing resolution authorizing the retirement and redemption of the preferred stock, bonds of such description and so secured shall be issued for an aggregate principal sum not exceeding \$50,000,000, and shall be sold for cash for the corporate purposes of the United States Steel Corporation.

RESOLVED, That the president and the secretary of this corporation be, and hereby they are, authorized and directed in its behalf to enter into a contract dated April 1, 1902, with Messrs. J. P. Morgan & Co., substantially in the form of that hereunto annexed; such contract to be executed forthwith, but not finally to become or to be operative until after approval thereof by the stockholders in special meeting assembled.

THIRD.—That at said meeting, the board of directors did duly call a special meeting of the stockholders, to be held upon Monday, May 19, 1902, at 12 o'clock noon, at the principal office of the corporation, in the building of the Hudson Trust Company, No. 51 Newark Street, in the City of Hoboken, County of Hudson, New Jersey, to take action upon such resolutions of the board of directors, and thereupon due notice of such special meeting of stockholders (in the following form) was duly given in the manner which is fully provided in the by-laws.

(Form of Notice.)

UNITED STATES STEEL CORPORATION.

Notice of Special Meeting of May 19, 1902, as authorized by the Board of Directors, 20th Meeting.

Notice hereby is given that a special meeting of the stockholders of the United States Steel Corporation has been duly called, and will be held at the principal office of the corporation, at the building of the Hudson Trust Company, No. 51 Newark Street, in the City of Hoboken, County of Hudson, New Jersey, on Monday, the nineteenth day of May, 1902, at twelve o'clock noon, for the following purposes:

(A) To take action upon and with reference to each and every of four resolutions adopted by the board of directors of the United States Steel Corporation, at the meeting thereof held April 1, 1902, as follows, to wit:

(1) The resolution declaring it to be advisable, to the extent that holders thereof shall consent thereto, to redeem and to retire 2,000,000 shares of the outstanding preferred stock of the corporation out of bonds or the proceeds of bonds, bearing interest at the rate of five per cent. per annum, the principal of such bonds being

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made payable in sixty years, and at the pleasure of the company redeemable after the expiration of ten years from the date thereof.

(2) The resolution authorizing the issue of bonds for the principal sum of \$250,000,000, to be secured by a mortgage, lien or pledge upon the property, and upon the stocks of other corporations, now held and owned or hereafter acquired by the United States Steel Corporation, which lien or pledge shall be next and similar to that securing bonds of the corporation for \$304,000,000 issued under and secured by the indenture to the United States Trust Company, of New York, dated April 1, 1901; and authorizing the offer to preferred stockholders of said \$250,000,000 bonds at par, payable \$200,000,000 in preferred stock at par, and \$50,000,000 in cash.

(3) The resolution authorizing the issue and sale, for cash, of \$50,000,000 of bonds of such description and so secured, for the corporate purposes of the corporation.

(4) The resolution authorizing and approving a contract between the corporation and Messrs. J. P. Morgan & Co., dated April 1, 1902, providing for the public offer by them to the preferred stockholders of such bonds, and for the acquisition by them of such of said bonds as preferred stockholders shall not take, all as set forth in said contract.

(B) To vote to consent, or not to consent, to redeem and to retire preferred stock substantially to the extent and in the manner provided in said resolutions and contract, of which copies may be obtained by stockholders at the office of the corporation.

The stock transfer books will be closed at the close of business on Saturday, the nineteenth day of April, 1902, and will be reopened at ten o'clock in the morning of Tuesday, May 20, 1902.

By order of the board of directors.

RICHARD TRIMBLE,
Secretary.

HOBOKEN, New Jersey, April 17, 1902.

FOURTH.—That pursuant to such call and notice, and at the time and place specified therein, a special meeting of the stockholders of said corporation was duly held, and at such meeting the said resolutions of the board of directors were duly submitted for action by the stockholders thereon; whereupon, in person or by proxy, the holders of 3,745,731 shares of the preferred stock out of the total outstanding issue of 5,102,800 shares of such stock, and the holders of 3,958,557 shares of common stock out of the total outstanding issue of 5,083,011 shares of such stock—the same being more than two-thirds in interest of each class of stockholders having voting powers and more than two-thirds in interest of each class of the stockholders present in person or by proxy at said meeting—did vote as follows:

(1) In favor of approving and ratifying the action of the

CONVERSION, PREFERRED STOCK INTO BONDS. 631

board of directors at the twentieth meeting thereof, held April 1, 1902, as set forth in the several resolutions of the board submitted to this meeting:

(2) To consent that to the extent that holders thereof shall consent thereto 2,000,000 shares of the outstanding preferred stock of the corporation be redeemed and be retired out of bonds or the proceeds of bonds, bearing interest at the rate of five per cent. per annum, the principal of such bonds being made payable in sixty years, and at the pleasure of the corporation redeemable after the expiration of ten years from the date thereof:

(3) To authorize and consent to the issue of bonds for the principal sum of \$250,000,000 to be secured by a mortgage, lien or pledge upon the property, and upon the stocks of other corporations, now held and owned or hereafter acquired by the United States Steel Corporation; which lien or pledge shall be next and similar to that securing bonds of the corporation for \$304,000,000, issued under and secured by the indenture of the United States Trust Company, of New York, dated April 1, 1901; and to authorize and consent to the offer to preferred stockholders of said \$250,000,000 bonds at par, payable \$200,000,000 in preferred stock at par and \$50,000,000 in cash:

(4) To authorize and to consent to the issue and sale, for cash, of \$50,000,000 bonds of such description and so secured, for the corporate purposes of the corporation:

(5) To authorize, approve and confirm the contract between the corporation and Messrs. J. P. Morgan & Co., made and dated April 1, 1902, providing for the public offer by them to the preferred stockholders of such bonds, and for the acquisition by them of such of said bonds as preferred stockholders shall not take, all as set forth in said contract, and upon the terms and for the compensation therein stated.

Prior to such meeting, but subsequent to the time of closing the transfer books for such meeting, the undersigned secretary and treasurer, acting under Section 5 of Article 1 of the by-laws of the corporation, did examine the original powers of attorney and substitution, and did make and deliver in due form the certificate as to the regularity of all such powers of attorney and substitution, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney.

FIFTH.—The total par amount of the preferred stock of the corporation, now outstanding, is \$510,280,000; which stock entitles the holders thereof to receive dividends at a rate exceeding five per centum, to wit, at the rate of seven per centum per annum, and dividends at such rate on such preferred stock at any time issued and outstanding have been declared and paid at such rate for the period of at least one year next preceding the said meeting.

SIXTH.—The total floating or unfunded debt of the corporation does not exceed \$51,028,000, or ten per centum of the par amount of the preferred stock now outstanding.

SEVENTH.—In the judgment of the officers making the certificate, the assets of the corporation, after deducting the amount of the indebtedness of the corporation, are at least equal to the amount of the preferred stock now issued and outstanding, as above stated.

EIGHTH.—The location of the principal office of the corporation in the State of New Jersey is at No. 51 Newark Street, in the City of Hoboken, County of Hudson. The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is Hudson Trust Company.

IN WITNESS WHEREOF, this certificate has been signed by United States Steel Corporation and by its president and its secretary and treasurer, respectively, under the corporate seal, this nineteenth day of May, 1902.

UNITED STATES STEEL CORPORATION,

(Seal.)

**By C. M. Schwab,
President.**

Attest

**Richard Trimble,
Secretary.**

C. M. Schwab, President.

[L. S.]

UNITED STATES STEEL CORPORATION.

Secretary and Treasurer. [L. s.]

UNITED STATES STEEL CORPORATION.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

BE IT REMEMBERED that on this nineteenth day of May, A. D. one thousand nine hundred and two, before me, the undersigned, a master in chancery of New Jersey, personally appeared CHARLES M. SCHWAB, to me known and known to me to be the president, and RICHARD TRIMBLE, to me known and known to me to be the secretary of UNITED STATES STEEL CORPORATION, the corporation named in the foregoing certificate; and I, having first made known to them and to each of them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

And the said RICHARD TRIMBLE, being by me duly sworn according to law, on his oath doth depose and say that he is the secretary of the UNITED STATES STEEL CORPORATION; that the seal affixed to the foregoing certificate is the corporate seal of said corporation, the same being well known to him; that it was so affixed by order of said UNITED STATES STEEL CORPORATION; that CHARLES M. SCHWAB is president of said corporation, and signed said certificate and affixed said seal

thereto, and delivered said certificate by authority of the board of directors and with the assent of more than two-thirds in interest of each class of stockholders of said corporation, as and for his voluntary act and deed, and the act and deed of said corporation, in the presence of deponent, who at the same time subscribed his name thereto as secretary of said corporation and as subscribing witness. And deponent further says that the meeting of stockholders referred to in said certificate was duly called in the manner provided in section twenty-seven of "An Act Concerning Corporations (Revision of 1896)," and that the consent hereto appended is signed by more than two-thirds in interest of each class of the stockholders having voting powers, either in person or by their severally duly constituted attorneys in fact thereunto duly authorized in writing.

RICHARD TEIMBLE.

Subscribed and sworn to before
me the day and year aforesaid.

JNO. S. MABON,

Master in Chancery of New Jersey.

(Here follow the names of stockholders, together with the number of shares held by each.)

HOBOKEN, N. J., May 19, 1902.

The persons and corporations above named, being the holders of shares of the preferred stock and of the common stock of the UNITED STATES STEEL CORPORATION, severally and respectively, to the amount indicated opposite our several subscriptions hereto, having heretofore made, executed and delivered to our attorneys, Abram S. Hewitt, William E. Dodge, Francis H. Peabody, Myles Tierney and Henry W. deForest, and to each of them full power to act, vote and assent for us in the manner and to the extent set forth in our proxy, of which a printed copy is hereto prefixed, and our said attorneys having vested full power by substitution in the said Myles Tierney and Henry W. deForest, who upon this nineteenth day of May, 1902, at Hoboken, New Jersey, at the said special meeting of the stockholders of the said corporation, have voted in our behalf in favor of each and every of the several resolutions, and to give the assent authorized in and by said proxy, and under the notice of said meeting, of which also a copy is hereto prefixed.

Now we and each of the said stockholders by our said attorneys, Myles Tierney and Henry W. deForest, hereby do assent and consent in writing:

(1) That the UNITED STATES STEEL CORPORATION, to the extent that holders thereof shall consent thereto, shall redeem and retire 2,000,000 shares of the outstanding preferred stock of the corporation out of bonds or the proceeds of bonds, bearing interest at the rate of five per cent. per annum, the principal of such bonds being

made payable in sixty years, and at the pleasure of the corporation redeemable after the expiration of ten years from the date thereof;

(2) That the UNITED STATES STEEL CORPORATION shall issue bonds for the principal sum of \$250,000,000, to be secured by a mortgage, lien or pledge upon the property, and upon the stocks of other corporations now held and owned, or hereafter acquired by the UNITED STATES STEEL CORPORATION; which lien or pledge shall be next and similar to that securing bonds of the corporation for \$304,000,000 issued under and secured by the indenture of the UNITED STATES TRUST COMPANY OF NEW YORK, dated April 1, 1901; and shall authorize the ratable offer to preferred stockholders of said \$250,000,000 bonds at par, payable \$200,000,000 in preferred stock at par, and \$50,000,000 in cash;

(3) That the UNITED STATES STEEL CORPORATION shall issue and sell for cash \$50,000,000 of bonds of such description and so secured, for the corporate purposes of the corporation;

(4) That the UNITED STATES STEEL CORPORATION shall carry into effect and perform the contract with Messrs. J. P. Morgan & Co., dated April 1, 1902, providing for the public offer by them to the preferred stockholders of such bonds, and for the acquisition by them of such of said bonds as preferred stockholders shall not take, all as set forth in said contract; and

(5) That the UNITED STATES STEEL CORPORATION shall redeem and retire preferred stock substantially to the extent and in the manner provided in the resolutions and contract, adopted and authorized at the 20th meeting of the Board of Directors held April 1, 1902.

H. W. DE FOREST,
MYLES TIERNEY.

Endorsed:

“Filed May 19, 1902.

“S. D. DICKINSON,
“Secretary of State.”

CORPORATE MORTGAGE AND BOND.

Form 420.

COLLATERAL DEED OF TRUST SECURING ISSUE OF BONDS.

AN INDENTURE, dated the _____ day of _____, 19____, between _____ Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter termed “the Company”), party of the first part, and _____ Trust Company, a corporation created and existing under the laws

WHEREAS, the _____ Company has acquired, or is about to acquire, certain common shares of the capital stock of the _____ Company and the _____ Company, corporations organized and now existing under the laws of the State of New Jersey; and,

WHEREAS, said bonds are to be issued either as coupon bonds of the denomination of \$1,000 or of \$5,000 each; or as registered bonds without coupons of the denomination of \$50, \$1,000, \$5,000, \$10,000, \$50,000 or \$100,000 each; or partly as such coupon bonds of either or both of such denominations, and partly of such registered bonds without coupons of any of such denominations; and the several coupon bonds may be registered as to principal, and also may be exchanged for registered bonds without coupons; and the registered bonds may be converted into coupon bonds of the denominations of \$1,000 and \$5,000 aforesaid; and each bond is to bear a distinctive number or mark; and,

WHEREAS, said bonds are to bear interest at the rate of four per cent. per annum, payable semi-annually on the first days of _____, and _____, and said coupon bonds are to have attached thereto coupons representing the installments of interest which may become due thereon, and each of such coupons is to bear the engraved fac-simile signature of the present treasurer or of any future treasurer of the Company, and for that purpose the Company may adopt and use the engraved fac-simile signature of any person who shall have been such treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time that the bonds to which such coupons belong shall actually be issued; and,

WHEREAS, on each of said coupon bonds, and on each of said registered bonds without coupons, there is to be endorsed a certificate of said Trust Company, or its successor appointed hereunder, that such bond is one of the bonds described in this indenture, and no bond is to be secured by this indenture, or obligatory for any purpose, unless such certificate shall have been executed by the Trust Company or its duly appointed successor; and,

WHEREAS, said coupon bonds and registered bonds, said coupons

and said trustee's certificates are to be substantially in the following forms, namely:

(Form of Coupon Bonds.)

UNITED STATES OF AMERICA.

STATE OF NEW JERSEY.

COMPANY.

Fifty-Year Four Per Cent. Gold Bond.

\$

No.

Company, a corporation created and existing under the laws of the State of New Jersey, and hereinafter termed "the Company," for value received promises to pay on the first day of A. D. , at its office or agency in the City of New York, to bearer, or, if registered, to the registered holder of this bond, thousand dollars in gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from , 19 , at the rate of four per cent. per annum, such interest to be payable at such office or agency in like gold coin semi-annually on the first days of and in each year, but only upon presentation and surrender of the respective coupons for such interest hereto attached, as they severally mature. All payments upon this bond, both of principal and interest, shall be made without deduction of any tax or taxes which the Company, its successors or assigns, may be required to pay, deduct or retain therefrom under any present or future law of the United States or of any state, county or municipality therein.

This bond is one of a duly authorized issue of coupon and registered bonds of the Company, the aggregate amount whereof is limited so that there shall never at any one time be outstanding bonds of said issue for an aggregate principal sum exceeding \$; all of which bonds have been issued or are to be issued, under and in pursuance of, and are to be secured ratably by, and are subject to an indenture dated , A. D. , duly executed by the Company to the Trust Company, as trustee, under which indenture certain shares of stock have been or are to be deposited with said trustee; and a charge is imposed upon present and future net income earnings and profits of the Company; and hereby reference is made to said indenture with the same effect as if herein fully set forth.

No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the Company, either directly or through the Company by virtue of any statute or by enforcement of any assessment or otherwise; any and all liabilities of stockholders, directors and officers of the Company being hereby released.

This bond shall pass by delivery unless registered in the owner's name on the books of the Company at its office or agency in the City of New York, such registry being noted on the bond by the bond registrar of the company, after which no transfer shall be valid unless made on said books in the manner prescribed in said indenture and similarly noted on the bond; but the same may be discharged from registry by being transferred in like manner to bearer, after which transferability by delivery shall be restored; but again, from time to time, it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon, by delivery merely, and payment to the bearer thereof shall discharge the Company in respect of the interest therein mentioned, whether or not the bond shall have been registered.

This bond, with the coupons for all interest installments which shall not have matured, may also, as provided in said indenture, be exchanged for a registered bond without coupons.

Neither this bond nor any coupon for interest thereon shall become or be valid until the bond shall have been authenticated by the certificate endorsed hereon, duly signed by the trustee under such indenture.

IN WITNESS WHEREOF, Company has caused these presents to be signed by a vice-president and its corporate seal to be hereunder affixed, and to be attested by its secretary or assistant secretary, and coupons for such interest bearing the engraved fac-simile signature of its treasurer to be attached hereto, this day of , A. D. .

COMPANY,

By

Vice-President.

Attest:

Secretary.

(Form of Interest Coupon.)

No.

\$

Coupon for \$, gold coin of the United States of America, payable to bearer on the first day of , at the office or agency of Company in the City of New York, without deduction for taxes, for six months' interest due on that day on its \$ fifty-year four per cent. gold bond, No. , subject to the terms of said bond and the indenture therein mentioned.

Treasurer.

(Form of Registered Bond Without Coupons.)

UNITED STATES OF AMERICA,

STATE OF NEW JERSEY.

COMPANY.

Registered Fifty-Year Four Per Cent. Gold Bond.

\$

No.

Company, a corporation created and existing under the laws of the State of New Jersey, and hereinafter termed "the Company," for value received promises to pay to or registered assigns on the first day of , A. D. , at its office or agency in the City of New York, the sum of dollars in gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon from the first day of or the first day of , as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, such interest to be payable to the registered holder hereof at said office or agency in like gold coin semi-annually on the first days of and in each year. All payments upon this bond, both of principal and interest, shall be made without deduction of any tax or taxes which the

Company, its successors or assigns, may be required to pay, deduct or retain therefrom under any present or future law of the United States or of any state, county or municipality therein.

This bond is one of a duly authorized issue of coupon and registered bonds of the Company, the aggregate amount whereof is limited so that there shall never at any one time be outstanding bonds of said issue for an aggregate principal sum exceeding \$. All of which bonds have been issued, or are to be issued, under and in pursuance of, and are to be secured ratably by, and are subject to, an indenture dated , A. D. , duly executed by the Company to the Trust Company, as trustee, under which indenture certain shares of stock have been and are to be deposited with said trustee; and a charge is imposed upon present and future net income, earnings and profits of the Company; and hereby reference is made to said indenture with the same effect as if herein fully set forth.

No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, officer or director of the Company, either directly or through the

Company, by virtue of any statute or by enforcement of any assessment or otherwise; any and all liability of stockholders, directors and officers of the Company being hereby released.

This bond is transferable only in the manner prescribed in said indenture on the books of the _____ Company at its office or agency in the City of New York, upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange therefor on payment of the charge provided in said indenture.

Upon surrender and cancellation of registered bonds for the principal amount of \$1,000 or any multiple thereof, coupon bonds of a like amount of principal with all unmatured coupons attached will be issued as provided in said indenture.

This bond shall not become or be valid until authenticated by the certificate endorsed hereon, duly signed by the trustee under said indenture.

IN WITNESS WHEREOF, the _____ Company has caused these presents to be signed by a vice-president, and its corporate seal to be hereunto affixed and to be attested by its secretary or assistant secretary, this _____ day of _____ A. D. _____ .
COMPANY.

By

Vice-President.

Attest:

Secretary.

(Form of Trustee's Certificate.)

This is to certify that this bond is one of the issue of bonds of the _____ Company described in the indenture within mentioned.
TRUST COMPANY.

By

Trust Officer.

AND WHEREAS, the form of this indenture has been submitted to the board of directors of the _____ Company, which has duly resolved that, in behalf of said company, this indenture be executed by the president of the _____ Company, and the corporate seal be affixed thereto and be attested by its secretary, and that this indenture be delivered to said _____ Trust Company, as trustee, and the execution and delivery thereof be duly acknowledged; and that the fifty-year four per cent. gold bonds of the _____ Company, substantially of the tenor and effect set forth in this indenture, be executed from time to time in the name and in behalf of the _____ Company by the president or by a vice-president, and that the corporate seal be thereto affixed and be attested by the secretary or by any assistant secretary of the _____ Company; and that, from time to time, such bonds be issued, certified and delivered in the manner

and upon the terms and conditions and for the purposes set forth in this indenture;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal and the interest of all such fifty-year four per cent. gold bonds of the Company at any time issued and outstanding under this indenture, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the trustee, receipt whereof is hereby acknowledged;

Company, party of the first part hereto, has deposited, and by these presents does deposit with the trustee, party of the second part, and its successor or successors in the trusts hereby created, certificates for all the shares of the common stock of the Company and the Company which it now owns or which may hereafter be acquired by it, together with assignments in blank thereof.

BUT IN TRUST, NEVERTHELESS, under and subject to the conditions and provisions hereinafter set forth, and for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of such bonds and interest obligations when payable in accordance with the provisions of such bonds and interest obligations and of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond, by reason of priority in the issue or negotiation thereof, or by reason of any other cause, save as provided in Section 1 of article three hereof.

And as further security for the payment of the principal and interest of the bonds issued or to be issued hereunder, and for the performance by the Company of its covenants herein, the Company hereby imposes a charge

in favor of the trustee of this indenture upon all of its own present and future net income, earnings and profits, and upon all of the right, title and interest which it now has or which it ever hereafter may in any manner acquire in and to the net income, earnings, and profits of the Company and the

Company, and of any company to which the property and business of those companies, or either of them, may at any time be transferred; and it covenants that it will never mortgage its property, business and income otherwise than by an instrument which shall expressly recognize and confirm the charge aforesaid as a prior claim upon its net income, earnings and profits; and it further covenants that if the Company and the

Company, or either of them, shall hereafter mortgage their properties and businesses respectively, the majority in interest of the holders

of bonds outstanding hereunder shall have power to require the trustee to declare the Company in default hereunder, and thereupon the Company shall be deemed to be in default hereunder so long as such mortgage continues in force.

And hereby it is covenanted and declared that all such bonds are to be issued, certified and delivered, and the stocks subject to the lien of this indenture are to be held by the trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is covenanted and declared between the parties hereto as follows, namely:

ARTICLE ONE.

SECTION 1. From time to time the bonds to be secured hereby shall be executed by the Company, and by it shall be delivered for certification to the trustee; and thereupon, as provided in this article, and not otherwise, the trustee shall certify and shall deliver the same.

The amount of bonds hereby secured which may be executed by the Company, and which may be certified by the trustee is limited, so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding \$.

Before certifying or delivering any coupon bond hereby secured, the trustee shall detach and shall cancel all coupons thereof then matured; and every registered bond without coupons shall be dated on the day of the actual certification thereof. Only such of said bonds as shall bear thereon a certificate substantially in the form heretofore recited, duly executed by the trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder; no such bond, nor any coupon thereunto pertaining, shall be valid for any purpose until such certificate shall have been duly endorsed on such bond. Every such certificate of the trustee on any bond executed by the Company shall be conclusive, and the only evidence that the bond so certified was duly issued and that the same is entitled to the benefit of the trust hereby created.

The aggregate principal amount of bonds which may at any one time be outstanding hereunder shall never exceed a sum equal to the par or face value of the shares of common stock of the Company plus twice the par or face value of the shares of the common stock of the Company at such time held by the trustee hereunder; but, notwithstanding this limitation, the trustee shall not warrant or be bound to inquire into the genuineness or validity of any certificate of stock or assignment of shares deposited with it hereunder, and shall be fully author-

ized to certify and deliver bonds hereunder if it holds papers purporting and believed by it to represent an amount of stock sufficient to satisfy this limitation.

Subject to the foregoing provisions, the trustee shall, at any time and from time to time, certify and deliver the bonds aforesaid in accordance with any order in writing signed, or purporting and believed by it to be signed, by the president or a vice-president, and by the treasurer or assistant treasurer of the Company.

SEC. 2. Whenever any coupon bond or bonds issued under this indenture, together with all unmatured coupons thereto belonging, shall be surrendered to the Company for exchange for a registered bond or bonds without coupons, the Company shall cancel the surrendered bond and coupons and in lieu thereof shall execute and deliver, and the trustee upon receipt of the cancelled bond and coupons shall certify a registered bond or registered bonds for the same aggregate principal sum. Every registered bond without coupons so delivered in exchange for a coupon bond or for coupon bonds, shall bear interest from the date of the last-matured coupon of the surrendered bond or bonds.

Upon transfer, surrender and cancellation of any registered bonds without coupons, the Company shall execute and deliver to the transferee new registered bonds without coupons, of the same aggregate principal sum, such new bonds to be in any of the denominations aforesaid selected by the transferee, except that the issuance of \$50 registered bonds shall always be in the sole discretion of the Company; and upon receipt of such cancelled bonds the trustee shall certify the new bond or bonds.

Surrendered and cancelled bonds and coupons may at any time at the request of the Company be destroyed by the trustee.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds, the Company, at its option, may require the payment of a sum sufficient to reimburse it for any tax or other governmental charge or other expense connected therewith, and also of the further sum of one dollar for each new bond issued upon such exchange or transfer.

SEC. 3. In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Company, in its discretion, may execute, and thereupon the trustee shall certify, a new bond of like tenor and date (including coupons, in case of a coupon bond) and bearing the same serial number, in exchange and substitution for and upon cancellation of the mutilated coupon bond and its coupons, or the mutilated registered bond without coupons,

or in lieu of and substitution for the coupon bond and its coupons, or the registered bond without coupons, so destroyed upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of such registered bond without coupons, and upon receipt also of satisfactory indemnity.

SEC. 4. Until the bonds to be issued under and secured by this indenture can be engraved and printed, the _____ Company may execute, and, upon its request, the trustee shall certify and deliver, in lieu of such engraved bonds, and subject to the same provisions, limitations and conditions, temporary registered bonds of any amount not exceeding in the aggregate \$ _____, but otherwise substantially of the tenor of the registered bonds to be issued as hereinbefore provided. Upon surrender of such temporary bonds for exchange the _____ Company shall issue, and upon cancellation of such surrendered bonds, the trustee shall certify and deliver in exchange therefor engraved coupon bonds, or registered bonds without coupons, of the denominations hereinbefore provided, for the amount of the temporary bonds surrendered; and until so exchanged each of such temporary bonds shall be entitled to the same security as an engraved bond issued hereunder.

SEC. 5. Nothing in this article contained, or in any other article of this indenture, or in the bonds issued hereunder expressed or implied, is intended or shall be construed to give to any person or corporation other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds hereby secured.

ARTICLE TWO.

The _____ Company covenants as follows:

SECTION 1. Duly and punctually it will pay the principal and interest of every bond issued and secured hereunder at the dates and the place, and in the manner mentioned in such bonds, or in coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or by any state or county or municipality thereof, which the _____ Company may be required to pay or to retain therefrom, under or by reason of any present or future law. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be cancelled. The interest on

the registered bonds without coupons shall be payable only to the registered holders thereof.

At all times until the payment of the principal of the bonds secured by this indenture, the Company will keep an office or agency in the City of New York, where bonds and interest coupons may be presented for payment, and where notices or demands in respect of such bonds or interest coupons may be served, and, from time to time, the Company will give written notice to the trustee of the place of such office or agency. In case the Company shall fail to do so, presentation and demand may be made and notices may be served at the office of the trustee in the City of New York.

SEC. 2. The Company, at an office or agency to be maintained by it in the City of New York, will keep a register or registers for the registration and transfer of bonds issued hereunder, in which it will register, subject to such reasonable regulations as it may prescribe, all such bonds without coupons, and, upon presentation thereof for such purpose, any such coupon bonds; and such register or registers at all reasonable times shall be open to the inspection of the trustee.

Upon presentation to the bond registrar of the Company, at the place where such register shall be kept, of any such registered coupon bond, accompanied by delivery of a written instrument of transfer in the form approved by the Company, executed by the registered holder, such bonds may be transferred upon such register by the registered holder, in person or by attorney, and such transfer shall be noted by such bond registrar upon the bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a coupon bond shall be noted by the bond registrar on the bond.

Registration of any coupon bond, however, shall not affect the transferability of any coupon thereto belonging, by delivery, merely, and payment to the bearer of any such coupon shall discharge the

Company in respect of the interest therein mentioned, whether or not the bond shall have been registered.

Any registered bond or bonds without coupons may be transferred upon such register at such office or agency by the registered holder in person or by attorney upon surrender of such bond to such bond registrar for cancellation, delivery of a written instru-

ment of transfer in a form approved by the Company, duly executed by the registered holder of the bond, and payment of any charge imposed under Section 2 of Article 1 hereof; and thereupon a new registered bond, or new registered bonds, for an equivalent principal sum shall be issued to the transferee or transferees, as provided in said section.

SEC. 3. The Company, from time to time, will pay and discharge all taxes, assessments, imposts and governmental charges lawfully imposed upon the stocks and other property at any time subject to this indenture, or upon any part thereof, or upon the income or profits thereof, so that the lien and priority of this indenture shall be fully preserved in respect to such stocks and other property; provided, however, that the Company shall have the right to contest by legal proceedings any such tax, assessment, impost or governmental charge, and pending such contest may delay or defer the payment thereof.

SEC. 4. The Company, its successors and assigns, from time to time, on written demand of the trustee, or its successors, will make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law as may be reasonably advised, devised or required for effectuating the intention of these presents and for the better assuring or confirming unto the trustee and its successors in the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular, the property hereby deposited with the trustee, or intended so to be.

SEC. 5. No default on the part of the Company pending hereunder, the Company shall have the right to vote upon all shares of stock deposited with the trustee hereunder with the same force and effect as though such shares were not subject to this indenture, and shall be entitled from time to time to receive and collect, and to use and enjoy, all dividends that may be declared on any shares of the capital stock held by the trustee hereunder, and all of its own income, earnings and profits. In case of any default on the part of the Company hereunder, the trustee shall have power in its discretion to take possession of the business, assets and property of the Company, and to receive the income, earnings and profits thereof, and to cause any or all of the shares of stock deposited with it hereunder, to be transferred into its name as trustee hereunder, and thenceforth during the continuance of such default to exercise all the powers of ownership with reference to such shares, including the right to vote and receive all dividends thereon, such dividends and the profits of the Company so received by the trustee to be applied to the payment of interest maturing and matured on the bonds outstanding hereunder; but after any such default shall have been made good, or shall have been waived, the

right of the Company to have the shares aforesaid retransferred to its name, and to vote thereon, and to receive and collect dividends and use and enjoy the same together with its own income, earnings, and profits shall revive and continue as though such default had never happened.

Upon request of the Company, and upon the further request of the holders of a majority in amount of the bonds outstanding hereunder, the trustee is bound to use, transfer, sell or dispose of all or any of the shares of stock deposited with it hereunder for any purpose or in any manner which in its judgment will preserve and protect the security of the bonds hereunder, or will substitute therefor new security of equivalent or greater value. In respect to any of the matters covered by this article, the trustee may in good faith act upon the opinions and findings of legal counsel, investigators, appraisers and experts appointed by it, and so doing, shall incur no personal liability to any one.

The Company agrees to protect, indemnify and save harmless the trustee from any liability which may arise by reason of any action taken by the trustee in good faith under any of the provisions of this article.

The Company agrees promptly to pay all calls and assessments which may at any time be made with reference to all or any of the shares deposited hereunder.

ARTICLE THREE.

SECTION 1. No coupon belonging to any bond hereby secured which in any way at or after maturity shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of or from this indenture, except after the prior payment in full of the principal of the bonds issued hereunder and of all coupons and interest obligations not so transferred or pledged.

SEC. 2. In case default shall be made in the payment of any interest on any bond or bonds hereby secured and outstanding, and any such default shall have continued for the period of ninety days, then, and in every case of such continuing default, upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured and then outstanding, the trustee, by notice in writing delivered to the Company, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately; anything in this indenture, or in said bonds to the contrary notwithstanding.

This provision, however, is subject to the condition that if, at

any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of four per cent. per annum on overdue installments of interest, shall either be paid by the

Company or be collected out of the income and property pledged as security hereunder before any sale of the pledged property shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the

Company and to the trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

SEC. 3. In case (1) default shall be made in the payment of any interest on any bond hereby secured, and any such default shall continue for a period of ninety days; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) of any other default by the

Company hereunder, and any such last-mentioned default shall continue for a period of ninety days after written notice thereof to the

Company from the trustee or from the holders of twenty-five per cent. in amount of the bonds hereby secured, then, and in every such case, the trustee, personally or by attorney, and in its discretion (a) may cause all or any of the stock deposited with it hereunder to be transferred to its name as trustee, and thenceforth, in its discretion, exercise the voting power thereof and receive the dividends and all other advantages arising therefrom, and may also take possession of the assets and property of the

Company, and, in its discretion, manage and conduct said company's business and receive the income, earnings and profits thereof, applying all dividends and profits so received by it during the continuance of such default to the payment of interest matured and maturing on the bonds outstanding hereunder; or (b) may sell to the highest and best bidder, all and singular, the shares of capital stock and other property held by the trustee under this indenture, and all right, title and interest, claim and demand therein, and the right of redemption thereof, in one lot and as an entirety, or in separate lots, such as the trustee shall deem best; which said sale or sales shall be made at public auction at such place in the City of New York, in the State of New York, or at such other place, and at such time, and upon such terms as the trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; or (c) may proceed to protect and enforce its rights and the rights of the bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for any

foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce the rights aforesaid, and in any such suit the trustee shall be entitled as of right to the appointment of a receiver, having all usual powers, of the business, property and assets, income, earnings and profits of the Company, as well as of the shares deposited hereunder, and of all dividends, rights and interests arising therefrom or pertaining thereto.

In case the trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the trustee, then and in every such case the

Company and the trustee shall be restored to their former position and rights hereunder in respect of the income and property pledged hereunder, and all rights, remedies and powers of the trustee shall continue as though no such proceeding had been taken.

SEC. 4. Notice of any such sale, pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four (4) successive weeks prior to such sale in two daily newspapers published in the City of New York, State of New York.

Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding, from time to time shall have the right to direct and to control the method and place of conducting any and all proceedings for any sale of the property hereby pledged or for the foreclosure of this indenture, or for the appointment of a receiver, or for the purpose of taking any other proceedings hereunder.

The trustee, from time to time, may adjourn any sale by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

SEC. 5. Upon the completion of any sale or sales under this indenture, the trustee shall transfer and deliver to the accepted purchaser or purchasers, the certificates for the shares of stock and other property so sold.

The trustee and its successors hereby are appointed the true and lawful attorney or attorneys irrevocable of the

Company, in its name and stead to make all necessary transfers aforesaid, and for that purpose it and they may execute all necessary acts of assignment and transfer, the Company hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof; and agreeing to execute any confirmatory deed, assignment or transfer which may reasonably be required.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred or under and by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the property so sold, and shall be a perpetual bar both at law and in equity against the

Company of, in and to the Company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through or under the

Company, its successors or assigns; and the receipt of the trustee for the consideration money paid at any such sale shall be a sufficient discharge to the purchaser, without any liability upon the part of the purchaser to see to the application of the purchase money, or to be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SEC. 6. In case of such sale, whether under the power of sale hereby granted, or pursuant to judicial proceedings, the principal sums of all the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this indenture contained to the contrary notwithstanding.

SEC. 7. The purchase money, proceeds and avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the trustee, under any of the provisions of this indenture, as part of the trust estate or the proceeds thereof, shall be applied as follows:

First.—To the payment of the costs and expenses of such sale, including a reasonable compensation to the trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the trustee, with interest thereon.

Second.—To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such prin-

cipal and the accrued and unpaid interest, subject, however, to the provisions of Section 1 of this article.

Third.—To the payment of the surplus, if any, to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 8. In case of any sale hereunder, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons, in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after making any deductions which may be made from the proceeds of sale, of costs, expenses, compensation and other charges; and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the sums applicable out of such net proceeds to the payment of and credited on the bonds and coupons so presented; and, at any such sale, any bondholders may bid for, and may purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale may hold, retain and possess and dispose of such property in their own absolute right, without further accountability.

SEC. 9. The Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for a period of ninety days, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether by the maturity of said bonds, or by declaration as authorized by this indenture, or by a sale as provided in Section 6 of this article, then, upon demand of the trustee, the Company will pay to the trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of four per cent. per annum, upon the overdue principal and installments of interest; and in case the Company shall fail to pay the same forthwith upon such demand, the trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the pledged property, and the right of the trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of

any other right, power or remedy for the enforcement of the provision of this indenture or for the foreclosure of the lien thereof; and in case of a sale of the pledged property, and of the application of the proceeds of sale to the payment of the debt, the trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the trustee and no lien of any execution upon property subject to the lien of this indenture, or upon any other property, shall in any manner or to any extent affect the lien of the trustee upon the pledged property or any part thereof or any rights, powers or remedies of the trustee hereunder, or any rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys thus collected by the trustee under this section shall be applied by the trustee towards payment of the amount then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind, except as provided in Section 1 of this article, according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping thereon such payment, if only partially paid, and upon surrender thereof, if fully paid.

SEC. 10. The Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist upon any benefit or advantage from any law now or hereafter in force providing for valuation, or appraisement, of the pledged property or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any state, or otherwise, to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SEC. 11. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or

at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the trustee written notice of such default, and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the trustee and shall have offered to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor unless, also, they shall have offered to the trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture, for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever, by his or their action, to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

SEC. 12. No remedy herein conferred upon or reserved to the trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; but no action at law shall be instituted against the Company by any bondholder to enforce the contractual liability of the Company by reason of its covenants and promises contained in said bonds until the property hereby pledged shall have been exhausted by pursuit of the remedies herein provided.

SEC. 13. No delay or omission of the trustee, or of any holders of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this article to the trustee or to the bondholders may be exercised from time to time, and as often as may be deemed expedient by the trustee or by the bondholders.

ARTICLE FOUR.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Company, or of any successor corporation, either directly or through the Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this mortgage, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Company, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against every such incorporator, stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration of, the execution of this indenture and of the issue of the bonds and interest obligations secured hereby.

ARTICLE FIVE.

SECTION 1. From time to time the holders of a majority in amount of all the bonds hereby secured for the time being outstanding, by their vote at a meeting of the bondholders held as provided in Section 2 of this article or by an instrument or instruments in writing signed by such holders, shall have power (1) to assent to and authorize the release of any part of the property deposited with or held by the trustee under this indenture; (2) to assent to and authorize any modification or compromise of the rights of the bondholders and of the trustee against the Company or against any property subject to this indenture, whether such rights shall arise under these presents or otherwise; and (3) to assent to and authorize any modification of any of the provisions of this indenture that shall be proposed by the Company and recommended by the trustee. Any action taken with the assent or authority, given as aforesaid, of the holders of a majority in amount of the bonds hereby secured for the time being outstanding shall be binding upon the holders of all the bonds hereby secured

and upon the trustee as fully as though such action were specifically and expressly authorized by the terms of this indenture.

SEC. 2. Meetings of bondholders may be convened in the city of New York by the trustee, and shall be convened by the trustee on the request in writing by the holders of one-fourth in value of the outstanding bonds, and in the event of the refusal or neglect of the said trustee for thirty days after such request has been delivered to the trustee so to convene such meeting or meetings of bondholders, the holders of one-fourth in value of the then outstanding bonds may convene the same; and notice of the time, place and purpose of such meeting or meetings shall be given by six consecutive advertisements in at least one daily newspaper published in the City of New York, State of New York, the last of which advertisements shall be not less than thirty days before the date fixed for said meeting, and subsequent meetings may be called in such manner as may be fixed by regulations prescribed or established by the bondholders at such meeting, and the bondholders may vote at such meetings in person or by proxy; and such regulations or by-laws in respect of such meetings may from time to time be established, altered or repealed by the bondholders acting by a majority in value as to them shall seem expedient; and until the bondholders shall make such regulations and by-laws, such powers may be exercised by the trustee. And the trustee shall have the right at, or before, any meeting of bondholders, to require that any act or resolution of the bondholders affecting the duties of the trustee shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting. The presence in person or by proxy of the holders of not less than a majority in value of the outstanding bonds hereby secured shall be required to constitute a quorum at any meeting of the bondholders.

ARTICLE SIX.

SECTION 1. Any request, direction or other instrument required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders, in person, or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument, or of the writing appointing any such agent, and of the ownership of coupon bonds, transferable by delivery, if made in the following manner, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the trustee with regard to due action by it taken under such request.

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who, by the laws thereof, has power to take acknowl-

edgments within said jurisdiction, that the person signing such writing acknowledged before him the execution thereof; or by an affidavit of a witness of such execution.

The fact of the holding of coupon bonds hereunder by any bondholder, and the amount and issue number of any such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers, or other depository (wherever situated), if such certificate shall be deemed by the trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such trust company, bank, bankers or other depository, the bonds described in such certificate. The ownership of registered coupon bonds, or of registered bonds without coupons, shall be proved only by the register of said bonds.

SEC. 2. The Company and the trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon as the case may be, for the purpose of receiving payment thereof and for all other purposes; and neither the Company nor the trustee shall be affected by any notice to the contrary.

The Company and the trustee may deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered upon the books of the Company, as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of, the principal thereof, and for all other purposes except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered holder, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

ARTICLE SEVEN.

If, when the bonds hereby secured shall have become due and payable, the Company shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured, then outstanding, or shall provide for such payment by depositing with the trustee hereunder, for the payment of such bonds and coupons the entire amount then due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable here-

under by the Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or pledged shall revert to the Company, and the estate, rights, title and interest of the trustee shall thereupon cease, determine and become void; and the trustee in such case, on demand of the Company, and at its cost and expense, shall execute proper instruments acknowledging satisfaction of this indenture.

ARTICLE EIGHT.

The trustee, for itself, and its successors, hereby accepts the trusts and assumes the duties herein created and imposed upon it, but only upon the following terms and conditions, to wit:

(a) The trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document believed by it to be genuine and to have been signed by the proper party.

(b) The trustee may select and employ in and about the execution of this trust suitable agents and attorneys whose reasonable compensation shall be paid to the trustee by the Company, and for such payment a lien in favor of the trustee is hereby charged upon the hereby pledged income and property, and the proceeds thereof, paramount to said bonds. The trustee shall not be responsible for the recording or filing of this indenture or for the affixing or cancellation of any revenue stamps. The trustee, save for its wilful default or for its gross negligence after personal notice and distinct specification in writing from some person interested in the trust, shall not be personally liable to anybody.

(c) The trustee shall have a first lien upon the pledged property and funds for its own reasonable compensation and for all counsel fees, expenses and liabilities, with interest thereon, incurred in and about the execution of the trust hereby created, and in the exercise and performance of its powers and duties hereunder.

(d) The trustee shall be under no obligation or duty to perform any act hereunder, or defend any suit in respect hereof unless first reasonably indemnified, nor shall the trustee be chargeable with notice of any default on the part of the Company except upon delivery to it of a distinct specification in writing of such default by some person or persons interested in the trust, whose interest, if required, must be proved to the reasonable satisfaction of the trustee. Excepting as herein expressly otherwise provided, the trustee shall not be bound to recognize any person as a bondholder unless nor until his bonds are submitted to the trustee for inspection, if required, and his title satisfactorily established, if disputed.

(e) The recitals of facts herein and in said bonds contained shall be taken as statements by the _____ Company and shall not be construed as made by the trustee.

(f) The trustee, or any successor or successors hereafter appointed, may resign and be discharged of the trusts hereby created by written notice thereof to the _____ Company and by publication at least twice in each week for four successive weeks in a daily newspaper published in the City of New York, and by due execution of the conveyance herein required.

(g) Any money received by the trustee under any provision of this indenture may be treated by it, till it is required to pay out the same, conformably herewith, as a general deposit without any accountability for interest save such as during that time it allows to its general depositors.

ARTICLE NINE.

The trustee, or any trustee hereafter appointed, may be removed at any time by an instrument or concurrent instruments in writing, signed by the holders of not less than a majority in amount of the bonds hereby secured and then outstanding, and signed also by the _____ Company. In case at any time the trustee, or any trustee hereafter appointed, shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that in case at any time there shall be a vacancy in the office of trustee hereunder, the _____ Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The _____ Company shall publish notice of any such appointment by it made once in each week for six successive weeks in a daily newspaper published in the City of New York; and any new trustee appointed by the _____ Company shall immediately and without further act be superseded by a trustee appointed by the bondholders in the manner above provided prior to the expiration of one year after such publication of notice. Every such trustee appointed by the bondholders or by the _____ Company shall always be a trust company in New York City in good standing having a capital and surplus aggregating \$ _____, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any new trustee appointed hereunder shall execute, acknowl-

edge and deliver to the trustee last in office and also to the

Company, an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein; but the trustee ceasing to act, shall, nevertheless, on the written request of the

Company or of the new trustee, execute and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so ceasing to act, and shall duly assign, transfer and deliver all property and moneys held by such trustee to the new trustee. Should any deed, conveyance or instrument in writing from the

Company be required by any new trustee for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall on request be made, executed, acknowledged and delivered by it.

In case of the appointment of any new trustee under the provisions of this article, a new copy of the instrument making such appointment duly authenticated by the president and secretary of the

Company (they having inspected and compared said copy with the original) as a true copy, shall be filed with each of the corporations of whose capital stock shares shall be subject to this indenture.

ARTICLE TEN.

SECTION 1. All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the

Company, shall bind its successors and assigns, whether so expressed or not. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the term "the

Company" includes and means not only the party of the first part hereto, but also its successors and assigns.

SEC. 2. The word "Trustee" means the trustee for the time being, whether original or successor; the words "trustee," "bond," "bondholder," shall include the plural as well as the singular number unless otherwise expressly indicated. The word "coupons" refers to the interest coupons attached to the bonds secured hereby. The word "person," used with reference to a bondholder, shall include associations or corporations owning any of said bonds.

IN WITNESS WHEREOF, the said parties hereto have caused their respective corporate seals, duly attested, to be affixed to an original

President.

Vice-President.

[ADD ACKNOWLEDGMENTS.]

WHEREAS, for the purpose of making part payment for said plants and properties and discharging the obligations of the company in that behalf incurred and for other corporate purposes the company in the exercise of the powers in that behalf possessed by it and in accordance with resolutions duly adopted by its board of directors and by its stockholders at a meeting duly and regularly called and held, has determined to make and issue its coupon bonds in the aggregate amount of _____ dollars (\$ _____), payable in gold coin of the United States of America of the present standard

of weight and fineness, such bonds to be coupon bonds of the par value of one thousand dollars, or five hundred dollars or one hundred dollars each, and each of which bonds is to bear a distinctive number or designation, those for one thousand dollars bearing consecutive numbers from one upwards; those for five hundred dollars bearing consecutive numbers from one upwards; with the letter "D" prefixed, and those for one hundred dollars bearing consecutive numbers from one upward, with the letter "C" prefixed, payable on the first day of , 19 , and bearing interest at the rate of five per cent. per annum from the first day of , 19 , payable semi-annually in like gold coin, on the first days of and in each year; and

(Authority to execute mortgage):

WHEREAS, the said company under and pursuant to the power and authority aforesaid has determined to secure the prompt payment of the principal and interest of all said bonds by executing and delivering to the trustee a mortgage or deed of trust in the terms of this indenture, conveying the plants and properties hereinafter described and set forth, and to that end a mortgage or deed of trust securing said bonds in the form of this indenture was submitted to and approved by the board of directors and by the holders of the entire capital stock of the company at a meeting of said directors and of said stockholders respectively, duly and regularly called and held for such purpose, and the president or any vice-president and secretary or any assistant secretary of the company were duly authorized at said meeting on behalf of the company as its act and deed and under its corporate seal to execute, acknowledge and deliver the same to the trustee; and

WHEREAS, the form of the bonds and of the coupons to be attached thereto and of the certificate to be signed by the trustee for the authentication of said bonds were at said meetings severally and respectively submitted to and approved by said resolutions of the board of directors, and of all the stockholders of the company, and are substantially of the following tenor, to wit:

(Form of Bond.)

No.

§
COMPANY.

UNITED STATES OF AMERICA.

FIRST MORTGAGE.

Five per cent. sinking fund gold bond. Due , 19 .

Series A.

Company (hereinafter called "the company")
for value received hereby, promises to pay to the bearer, or, if

registered, to the registered holder of this bond, dollars (\$) in gold coin of the United States of America of, or equal to the present standard of weight and fineness on the first day of in the year 19 , at the City of , and to pay interest thereon from the first day of , 19 , at the rate of five per cent. per annum, payable in said city, in like gold coin semi-annually, on the first days of and in each year, upon presentation and surrender as they severally mature of the said coupons hereto annexed; both the principal and interest of this bond are payable without deduction for any tax or taxes which the company may be required to pay, or retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein. This bond is one of a series of bonds of the company known as First Mortgage five per cent. Sinking Fund gold bonds, due 19 , Series A, issued and to be issued to an amount not exceeding in the aggregate the principal sum of dollars (\$) at any one time outstanding, all of which bonds are issued or to be issued under and equally secured by the mortgage or deed of trust dated , executed by the company to the Trust Company, a corporation of the State of , as trustee, to which mortgage and deed of trust reference is made for a description of the properties and franchises mortgaged, the nature and extent of the security, the rights of the holders of the bonds under the same, and the terms and conditions upon which the bonds are issued and secured.

This bond shall not become effective or obligatory for any purpose unless and until it shall have been authenticated by the certificate hereon endorsed by the said trust company, as trustee. No present or future shareholder, officer or manager or trustee of the company shall be personally liable in respect to this bond or the coupons appertaining thereto. This bond shall pass by delivery unless registered in the name of the owner on the books of the company, such registry being noted on the bond by the company; after such registry no transfer shall be valid unless made on said books by the registered holder in person or by attorney, duly authorized and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which it shall be again transferable by delivery, but the registration of any bond shall not impair the negotiability of its coupons by delivery only.

This bond is subject to redemption on any first day of until its maturity, at par, with a premium of ten per cent. thereof, and of the interest then accrued, under the operation of a sinking fund, which requires the company to redeem at least dollars (\$) par value of said bonds annually, and is also

otherwise subject to call or redemption on the terms and in the manner provided in said deed of trust.

IN WITNESS WHEREOF the Company has caused these presents to be signed on its behalf by its president or its vice-president, and its seal to be hereunto affixed, attested by its secretary, and coupons for said interest with the engraved signature of its treasurer to be hereunto attached this day of , 19 .

By COMPANY,
President.

{ CORPORATE }
{ SEAL. }

Attest:

Secretary.

Form of interest coupon:

No. \$
Company will pay to bearer at the office of the Trust Company, in the City of , on the first day of , 19 , dollars in gold coin, being six months' interest then due on its first mortgage five per cent. sinking fund gold bond, due 19 , Series A, No. .
Treasurer.

Form of trustee's certificate:

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the company to the undersigned, as trustee.

The Trust Company.
Trustee.

By Vice-President.

Form of conversion clause:

This bond is convertible, at the option of the holder, upon the conditions provided in the said mortgage or deed of trust, into ten fully paid shares, of the common capital stock of the Company, of the par value of \$100 each, with an adjustment of current or accrued interest and dividends.

Granting clause:

AND, WHEREAS, in pursuance of the resolutions of the board of directors and also of all the holders of the capital stock of the company, duly adopted at meetings of said board of directors and of the stockholders severally and separately called and held, and in pursuance of all and every legal power and authority in it vested, the company proposes to make and execute, and from time to time

hereafter to issue and deliver bonds secured as hereinabove and hereafter more particularly set forth.

Now, THEREFORE, this indenture witnesseth:

That to secure the payment of the principal and interest of such bonds as may at any time be issued and outstanding under this indenture, according to their tenor and effect, and to declare the terms and conditions upon which said bonds are to be so issued, the company, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar, lawful money of the United States of America to it duly paid by the trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, pledge, and set over unto the party of the second part, and to its successor or successors in the trust hereby created all and singular the following real estate, plants, factories, goods, chattels, patents, rights, privileges, franchises and other property, to wit:

I.

Description of the several properties of the respective companies which have been absorbed:

The plant and property now belonging to the Company, and formerly owned by the _____ Company, situated in the City of _____ in the State of _____, and consisting of:

a. All those certain lots, pieces or parcels of land situate, lying and being in the City of _____, County of _____, State of _____, and bounded and particularly described as follows, to wit:

(Here follows a description in detail of the various pieces of real property owned by one of the companies absorbed.)

b. The buildings, structures, erections and constructions now or hereafter placed thereon with their fixtures.

c. All engines, furnaces, boilers, machinery, shafting, belting, pulleys, dynamos, dyes, patterns, drawings, tools, furniture, fixtures, appliances, implements and appurtenances of every kind and character which are now or may be at any time hereafter situate, lying or being in, on or about the said plants, premises and property described in clauses a and b hereof, and used or provided for use in and about the operation of said plant and property, and the carrying on of the business of the company in the same, whether the same are now owned by the said company or shall hereafter be acquired by it, it being the intention hereof that said plants, premises and

property shall be and are hereby conveyed as an active, going and operating manufacturing plant.

II.

Grant of letters patent:

All the right, title, interest, claim and demand of every kind or nature, legal or equitable, of the company, in and to all letters patent of any kind whether issued by the United States or any other country, and any interest therein, and any licenses or contracts in respect thereto (except such as are not assignable), which are now held or may hereafter be acquired by the company covering devices or inventions contained in any article or thing which it may manufacture, sell or use in the conduct of its business, and formerly owned by any of the companies mentioned in the foregoing paragraphs.

(Here follows a description in like terms of the several properties of each company absorbed by the mortgaging company.)

III.

Grant of certain materials and supplies:

All the raw material, steel, iron, lumber, fuel, oil, supplies, goods, wares and merchandise, and products of the company's business formerly owned by any of the aforesaid companies, whether manufactured or in process of manufacture, and all other tangible personal property, goods and chattels not hereinbefore conveyed of any and every kind, name and nature which the company may have in its possession or which may have been acquired by it from any of the aforesaid companies as fully and completely as though specifically mentioned herein.

(Describe specifically the nature of the property conveyed and adapt the language of this section to the products and property of the acquired company.)

IV.

Grant of good-will:

All the good-will of the business to be conducted and carried on by the company, as well as any and all trade-marks or trade names now owned by the company, including all the good-will, trade-marks and trade names which the company may have acquired from any of the aforesaid companies in the business now carried on and conducted by it or any part thereof.

V.

Grant of books of account:

All books of account of any and every kind, name and nature now owned or which may hereafter be acquired or kept by the company in the conduct of its business.

VI.

Grant of cash and outstandings:

All bills and accounts receivable outstanding, purchase or sale of contracts or other contracts, promissory notes, checks, drafts, money, claims, demands and choses in action, and all other property or things of value of any kind, name or nature, tangible or intangible, legal or equitable, of which the company may be possessed or to which it may have become entitled by reason of any sale, transfer or conveyance from any of the afore-mentioned companies.

VII.

Grant of rights, privileges, etc.:

All the rights, privileges, franchises and immunities of the company, including the right to be a corporation, in so far as they can be lawfully transferred and conveyed.

VIII.

Each class of property to be considered as separately granted:

It is intended that the grants of the several classes of property contained in the several paragraphs and sub-paragraphs hereinbefore set forth shall each be construed and treated as a separate, distinct grant for the purpose of securing the bonds issued hereunder, the same as though each of said classes of property were mortgaged and transferred to the trustee hereunder by a separate and distinct indenture, so that if it should at any time appear or be held that this indenture fails to transfer to the trustee the title to said several and distinct classes of property or any part thereof, as against creditors of the said company, other than the holders of said bonds or otherwise, such failure shall not operate to in any wise affect the transfer of the other classes of property or any part thereof; but nothing herein contained shall be construed as requiring the trustee or the bond holders to resort to any particular property for the satisfaction of the indebtedness hereby secured in preference or priority to any other property hereby conveyed, but it and they may seek satisfaction out of all said property or any part thereof in its and their own absolute discretion.

Property granted in trust for security of bonds:

TO HAVE AND TO HOLD the said good-will, lands, plants, buildings, patents, real and personal property, rights, privileges, franchises, estates and appurtenances hereby conveyed and assigned, or mentioned and intended so to be, unto the trustee and its successor or successors in the trust hereby created, forever; but in trust, nevertheless, for the equal, proportionate benefit and security of any and all bonds issued and to be issued hereunder without regard to time of the actual issue of said bonds, so that each bond shall have under and by virtue of this indenture the same right, lien and privilege as every other bond issued and to be issued hereunder, and as though all had been made, executed and delivered simultaneously with the execution and delivery of this indenture.

And it is hereby covenanted and agreed that all of said bonds hereby secured shall be issued, certified and delivered, received and negotiated, and that the mortgaged property and premises are hereby conveyed, assigned and transferred by the company, and are to be held by the trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth.

And it is covenanted between the parties hereto as follows, to wit:

ARTICLE ONE.**Manner of executing bonds:**

SECTION 1. All bonds to be secured hereby shall be signed by the president or one of the vice-presidents, and the corporate seal of the company shall be thereto affixed by the secretary or assistant secretary of the company, as may from time to time be directed by resolutions of the board of directors of the company. In case the officers who shall sign and seal any of said bonds aforesaid shall cease to be such officers of the company, after delivery of such bonds to the trustee, but before the bonds so signed and sealed shall have been actually authenticated and redelivered by the trustee, such bonds may, nevertheless, upon the request of the company, be issued, authenticated and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company.

Execution of coupons:

The coupons to be attached to said bonds shall be authenticated by the engraved signature of the present treasurer or any future treasurer of the company, it being intended that the company may adopt and use for that purpose the engraved signature of any such treasurer, notwithstanding that he may have ceased to be the treasurer of the company at the time when such bonds shall be actually authenticated and delivered. All of said bonds when

executed by the company shall be delivered to the trustee to be authenticated by it, and the trustee shall authenticate and deliver the same only as provided in this article.

Issue limited to \$:

Only such bonds as shall bear thereon the certificate of the trustee duly signed shall be secured by this indenture or entitled to any lien or benefit hereunder, and such certificate of the trustee upon any such bond executed on behalf of the company shall be conclusive evidence that the bond so authenticated has been duly issued hereunder and is entitled to the benefit of the trust hereby created. The aggregate amount of all of the bonds which may be issued and outstanding under this indenture shall not at any one time exceed dollars (\$).

\$ deliverable immediately:

SEC. 2. Bonds to the amount of dollars, with all coupons for interest hereto attached, shall forthwith be executed by the company and delivered to the trustee for authentication, and the trustee shall immediately (and without awaiting the recording of this indenture) authenticate and deliver the same upon the order of the president or vice-president and treasurer of the company.

Pending engraving of permanent bonds, temporary bonds may be issued:

Until the bonds intended to be secured hereby can be engraved and prepared, the company may execute and deliver, and the trustee shall certify written, printed or lithographed bonds substantially of the tenor of the bonds hereinabove recited, except that no coupons shall be attached thereto. The same may be for the payment of one hundred dollars, five hundred dollars or one thousand dollars, or any multiple thereof, as the company shall determine. All such written, printed or lithographed bonds shall bear upon their face the words "temporary bond issued under and secured by the mortgage bearing date , 19 , to the

Trust Company as trustee, and exchangeable for engraved bonds when issued." Any such bond shall be certified by the trustee in the same manner as the bond hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued under this indenture, and that the holder thereof is entitled to the benefit of the trust hereby created.

Exchange and cancellation of temporary bonds:

Such temporary bonds, issued and certified, as aforesaid, shall be exchangeable for engraved bonds to be issued under and secured by this indenture, and upon any such exchange said temporary bonds

shall be forthwith cancelled by the trustee and delivered to the company for destruction. Until so exchanged said temporary bonds shall in all respects be entitled to the lien and security of this indenture as bonds issued and certified hereunder; as long as any temporary bonds are outstanding a corresponding amount in face value of permanent bonds shall not be certified by the trustee.

Trustee to certify bonds, whether or not this indenture be recorded:

On request of the company the trustee shall certify temporary or permanent bonds, and shall deliver the same pursuant to the terms of this article, whether or not this indenture shall have been recorded.

Replacement of mutilated and destroyed bonds:

SEC. 3. In case any bond issued hereunder with the coupons thereunto pertaining shall be destroyed or mutilated, the company may, in its discretion, issue and the trustee shall thereupon authenticate a new bond of like tenor and date in exchange and substitution for the bond and coupons mutilated, upon cancellation thereof, or in substitution for any bonds and coupons destroyed or lost, upon filing with the trustee satisfactory evidence that such bond and coupons were destroyed or lost, and furnishing the company and the trustee with satisfactory indemnity.

Bonds to be issued only pursuant to mortgage:

SEC. 4. The company covenants that it will not issue, exchange, sell or dispose of any bonds hereunder in any manner other than in accordance with the provisions of this indenture, and the covenants and agreements in that behalf herein contained.

Covenants in mortgage for parties and bondholders only:

SEC. 5. Nothing in this indenture, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the parties hereto, and the holders of the bonds issued under and secured by this indenture, any right, remedy or claim, legal or equitable, under or by reason of this indenture, or any covenant, condition or stipulation hereof; this indenture and all its covenants, conditions and stipulations being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders from time to time of the bonds hereby secured.

ARTICLE TWO.

Covenant to pay principal and interest without deduction:

Office or agency in City of New York shall be kept:

SECTION 1. The company covenants that it will duly and punctually pay the principal and interest of every bond issued hereunder and

secured hereby, at the dates and the places and in the manner specified in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or by any state, county or municipality, and which the company may be required to pay or to retain therefrom, under or by reason of any present or future law. The interest on the bonds shall be payable only upon presentation of the several coupons for such interest as they respectively mature, and when paid, such coupons shall forthwith be cancelled. At all times, until the payment in full of the principal of the bonds secured by this indenture, the company will keep an office or agency in the City of New York, State of New York, where bonds and interest coupons may be presented for payment, and where notices or demands in respect of said bonds or interest coupons may be served, and, from time to time, the company will give written notice to the trustee of the location of such office or agency. In case the company shall fail to do so, presentation and demand may be made and notices may be served at the office of the trustee in the City of New York.

Warranty of title:

Covenant to discharge liens:

SEC. 2. The company covenants that it is well seized of the real estate above described, as of a good, sure, absolute and indefeasible estate in fee simple, and that it is the sole and absolute owner of the leasehold, chattels, real, personal property and rights above set forth, and that said real and personal property and rights are free and clear of any incumbrance, lien or charge, and that it will not create, or suffer to be created, any lien or charge having priority to or preference over the lien of these presents upon the mortgaged premises, or any part thereof, or upon the income thereof, and within six months after the same shall accrue it will pay, or cause to be discharged, or will make adequate provision for the satisfaction and discharge of, all lawful claims and demands of mechanics, laborers and others which, if unpaid, might be given by law preference as a lien or charge upon said premises, or any part thereof, or the income thereof. Provided, however, that nothing contained in this section shall require the company to pay any such claim on demand so long as the company in good faith, and by appropriate legal proceedings shall contest the validity thereof, or its enforceability as a lien or charge superior to this indenture; and the company further covenants that it shall and will warrant and forever defend the said real and personal property and rights against the claims of all and every person claiming, or to claim, the same or any part thereof.

Covenant to pay taxes:

SEC. 3. The company from time to time will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the premises and property hereby mortgaged, or upon any part thereof, or upon the income or profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such properties. The company will also pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the interests of the trustee or of the holder of any bond or bonds secured hereby in the mortgaged premises. Provided, however, that nothing contained in this section shall require the company to pay any such tax, assessment or charge so long as the company, in good faith, and by appropriate legal proceedings, shall contest the validity thereof.

Covenant to execute additional assurances:

SEC. 4. The company, its successors and assigns, from time to time, on written demand of the trustee, or its successor or successors, shall make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law as may be reasonably advised, devised or required for effectuating the intention of these presents, or for the better assuring and confirming unto the trustee, and its successor or successors in the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular the property hereby conveyed, assigned and transferred to the trustee, or intended so to be.

Covenant to insure property:

SEC. 5. The company agrees to at all times keep the buildings, furniture, fixtures and all the tangible, destructible property covered by this indenture, insured in responsible and approved insurance companies, to at least eighty per cent. of its full insurable value, and to cause the policies for all such insurance to be made payable to the trustee hereunder for the benefit of the holders of the bonds secured hereby, and will, if requested by said trustee, assign and deliver to it all such policies of insurance. If the company shall fail to comply with this covenant on its part, the trustee may procure such insurance, and the sums paid therefor shall be a charge upon the mortgaged property prior and paramount to the bonds hereby secured.

Covenant to keep property in operation and repair:

SEC. 6. The company agrees that (except as otherwise provided herein) it will, at all times, actively conduct and carry on the business for which it was incorporated, and which it is now carrying

on and conducting, and that it will keep and maintain in good repair and condition, and in active operation, its several plants and properties.

ARTICLE THREE.

Covenant to make annual sinking fund payment:

Sinking fund to be used in purchase or redemption of bonds:

SECTION 1. As a sinking fund for the payment of the indebtedness hereby secured, the company covenants and agrees that it will, prior to the first day of _____, 19____, and annually on or before the first day of _____, pay or cause to be paid to the trustee in each and every year thereafter, until the bonds issued hereunder and secured hereby, are all fully paid, principal and interest, the sum of _____ hundred thousand dollars (\$ _____), in lawful gold coin of the United States, of or equal to the present standard of weight and fineness to be applied by the trustee to the redemption of said bonds; provided, however, that the company may, in place of such cash payment, or any part thereof, deliver to the trustee for the credit of the sinking fund bonds of this issue at par, whereupon said bonds shall be cancelled; and further provided, that the trustee shall have the right upon being furnished with funds by the company for the purpose, to purchase bonds from time to time and apply the same at par on account of the requirements of the sinking fund. The method of redemption of said bonds shall be as follows:

Method of redemption:

The company, for four weeks prior to the _____ day of _____ in each year, beginning four weeks prior to the _____ day of _____, 19____, shall, by notice published once in each week in a daily newspaper published in the City of New York, advertise that sealed proposals for the sale of _____ hundred thousand dollars (\$ _____) of said bonds, or such part thereof as with any bonds already purchased or acquired may be necessary to complete the payment of \$ _____ in par value, will be received at the office of the company, in the City of New York, on or before the _____ day of _____ of such year, and that those offered at the lowest price, not exceeding, however, par and a premium of ten per cent., with accrued interest, will be accepted and paid for on the first day of _____ of the same year. If an insufficient number be so offered for sale, there shall be drawn by lot on the first day of _____ or the next juridical day thereafter, in the presence of the president or vice-president, or other executive officer for the time being of the trustee, and of a notary public, a sufficient amount of said bonds by number neces-

sary to complete such redemption. The company shall advertise the said numbers so drawn in a daily newspaper published in the City of New York once a week for three successive weeks prior to the first day of _____ then next ensuing, and a notice that interest on said bonds will cease on said first day of _____, and requiring the same to be presented for redemption as aforesaid. If any bonds so drawn be registered on the transfer register a similar notice shall be sent to the registered holder at his address upon such register. Interest upon such bonds so drawn shall cease accordingly on said first day of _____ next ensuing, and upon that date said bonds so drawn, upon presentation and surrender thereof, with all unmatured coupons shall be paid at par with a premium of ten per cent. thereof, and accrued interest to said date, and the bonds so agreed to be purchased under the proposals as herein provided shall be presented to the trustee for payment. When so purchased or redeemed said bonds shall be immediately cancelled by the trustee, and such evidence of cancellation be given to the company as may be necessary.

Bonds redeemable on any first day of _____ at 110:

SEC. 2. In addition to the compulsory redemption of _____ hundred thousand dollars (\$) _____ par value of said bonds annually as herein provided, the Company shall have the right at its option to redeem all or any bonds of this issue on any first day of _____ until their maturity at par with a premium of ten per cent. and accrued interest to said date, and in case such option is exercised the foregoing provisions of this article for the redemption of said \$ _____ par value of said bonds shall apply to the redemption of such additional bonds.

Exchange of bonds for common stock:

Any part or all of the bonds hereby secured may, at the option of the holder thereof, be exchanged at any time prior to the maturity thereof for fully paid shares of the common capital stock of the company, at the rate of ten shares of said stock for each \$1,000 of said bonds, with a cash adjustment of accrued interest and dividends, upon the surrender of such bonds with all unmatured coupons thereto belonging.

ARTICLE FOUR.

Lien of detached coupons subordinated:

SECTION 1. No coupon belonging to any bond hereby secured, which in any way, at or after maturity, shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bonds, be entitled, in case of a default

hereunder, to any benefit of or from this indenture, except after the prior payment in full of the principal of the bonds issued hereunder and of all coupons and interest obligations not so transferred or pledged.

On default, trustee may declare principal due:

On default, trustee may take certain steps:

SEC. 2. In case default shall be made in the payment of any interest on any bond or bonds hereby secured and outstanding, or in the payment annually to the trustee of the sum payable for the sinking fund, as provided in Article 3 of this indenture, and any such default shall have continued for the period of ninety days, then, and in every case of such continuing default, the trustee may, and upon the written request of the holders of a majority in amount of the bonds hereby secured and then outstanding shall, by notice in writing delivered to the company, declare the principal of all the bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds to the contrary notwithstanding.

Notice to be given:

This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon such bonds, with interest at the rate of five per centum per annum on overdue installments of interest, shall either be paid by the company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the company and to the trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

SEC. 3. In case (1) default shall be made in the payment of any interest on any bond hereby secured, and any such default shall continue for a period of ninety days; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the company, and any such last mentioned default shall continue for a period of six months after written notice thereof to the company and to said Trust Company from the trustee or from the holders of a majority in amount of the bonds hereby secured, then, and in every such case the trustee personally or by attorney, and in its discretion,

May take possession of and operate mortgaged property:

(a) May enter into and upon all or any part of the company's real estate, plants and all other property hereby conveyed to the trustee or which may at any time become subject to this indenture, and each and every part thereof, and may exclude the company therefrom, and, having and holding the same may use, operate, manage and control such of the company's plants and other properties; manufacture and sell and all articles produced by the company in its business, execute any and all contracts and make new contracts, and in general carry on and conduct the business of said company as fully as it might do if in possession thereof; and upon every such entry the trustee, at the expense of the trust estate, from time to time, either by purchase, repairs or construction, may maintain and restore, and insure, or keep insured, the plants, machinery, tools, appliances and all other chattels and personal property provided for use in connection with said business of the company whereof it shall have become possessed as aforesaid, and in the same manner and to the same extent as is usual with manufacturing companies, at the expense of the trust estate; and make all necessary and proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon as to it may seem judicious, and in such case the trustee shall have the right to manage the mortgaged premises and carry on the business and exercise all the rights and powers of the company, either in the name of the company or otherwise as the trustee shall deem best, and it shall be entitled to collect and receive all tolls, earnings, incomes, rents, issues and profits of the same, and every part thereof, and, after deducting the expenses of operating said plants, and other property, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments and insurance, or prior or other proper charges upon said premises and property, or any part thereof, as well as just and reasonable compensation for its own services, and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall employ the moneys arising as aforesaid, as follows: In case the principal of the bonds hereby secured shall not have become due by declaration or otherwise, to the payment of the interest in default in the order of maturity, with interest thereon at five per cent., such payments to be made ratably to the persons entitled thereto without discrimination or preference. In case the principal of the bonds hereby secured shall have become due by declaration or otherwise, first, to the payment of the principal and accrued interest in the manner provided in section seven of this article. Upon the payment in full of whatever may be due for the principal and interest of the said bonds,

or be payable for other purposes, the premises shall be returned to the company; or,

May sell mortgaged property:

(b) May, in the name of the company and as its attorney in fact for that purpose by these presents duly constituted, sell to the highest and best bidder all and singular the real estate, plants, factories, patents, good-will, rights, privileges, goods and chattels, and all other property held by or conveyed to it under this indenture, or intended so to be, and all right, title, interest, claim and demand therein, and the right of redemption thereof, in one lot and as an entirety, or in separate lots, as the trustee shall deem best, and in one sale, or any number of separate sales, held at one time or any number of times, which said sale or sales shall be made at public auction at such place in the City of _____ in the State of _____, and at such time and upon such terms as the trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law. If the trustee shall determine to sell said mortgaged property in parcels, it may, in its discretion, make the sale of any one of the plants and properties hereinabove described at any place where said plant and property may be located; or,

May proceed to foreclose:

(c) May proceed to protect and enforce its rights and the rights of the bondholders under this indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce the rights aforesaid.

In case the trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of any waiver, or for any other reason, or shall have been determined adversely to the trustee, then and in every such case, the company and the trustee shall be restored to their former position and rights hereunder in respect of the mortgaged property, and all rights, remedies and powers of the trustee shall continue as though no such proceeding had been taken.

Notice in case of sale:

SEC. 4. Notice of any sale by the trustee pursuant to any provision of this indenture, shall state the time and place when and where the same is to be made, and shall contain a brief general

description of the property to be sold, and (if said sale shall take place in New York) shall be sufficiently given if published once in each week for four successive weeks prior to such sale in two daily newspapers published in the City of _____ in the State of _____.

. If said sale shall take place elsewhere, such notice shall also be published once in each week for four successive weeks in a newspaper published in the county in which such sale shall take place.

The trustee shall give such further or additional notice as may be required by the laws of the state where such sale may be made.

Majority of bondholders may direct proceedings:

Anything in this indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and to control (subject to the limitations above described) the method and place of conducting any and all proceedings for any sale of the property hereby pledged, or for the foreclosure of this indenture, or for the appointment of a receiver, or for the purpose of taking any other proceedings hereunder.

Adjournment of sales:

The trustee, from time to time, may adjourn any sale or sales by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and, without further notice or publication, it may make such sale or sales at the time and place to which the same shall be so adjourned.

Transfer of property on sale:

SEC. 5. Upon the completion of any sale or sales under this indenture, the trustee shall execute and deliver to the accepted purchaser or purchasers all such deeds, conveyances, bills of sale or other instruments in writing as may be requisite, convenient, necessary or desirable to vest in the purchaser or purchasers the complete title to the properties sold.

The trustee and its successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the company, in its name and stead, or otherwise, to make, execute, acknowledge and deliver all such deeds, conveyances, bills of sale or other written instruments, the company hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof.

Effect of sale:

Any sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred, or

under and by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the company of, in and to the property so sold, and shall be a perpetual bar, both at law and in equity, against the company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof, from, through or under the company, its successors or assigns; and the receipt of the trustee for the consideration money paid at any such sale or sales shall be a sufficient discharge to the purchaser, without any liability upon the part of the purchaser to see to the application of the purchase money, or to be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale or sales.

Principal to become due in case of sale:

SEC. 6. In case of such sale or sales, whether under the power of sale hereby granted or pursuant to judicial proceedings, the principal sums of all the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this indenture contained to the contrary notwithstanding.

SEC. 7. The purchase money, proceeds and avails of any such sale or sales, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any sums which then may be held by the trustee, under any of the provisions of this indenture, as part of the trust estate or the proceeds thereof, shall be applied as follows:

Application of proceeds of sale:

First—To the payment of the costs and expenses of such sale, including a reasonable compensation to the trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the trustee.

Second.—To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest at the rate of five per centum per annum on the overdue installments of interest; and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of Section 1 of this article.

Third.—To the payment of the surplus, if any, to the Trust Company, as trustee, to be applied to the payment pro rata of the principal and interest of the bonds secured by said mortgage

to it; and upon the payment in full of such bonds and interest, the surplus, if any, shall be returned to the company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Purchaser may make payment with bonds:

SEC. 8. In case of any sale hereunder, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons, in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after making any deductions which may be made from the proceeds of sale for costs, expenses, compensation and other charges, and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the sums applicable out of such net proceeds to the payment of and credited on the bonds and coupons so presented; and, at any such sale, any bondholders may bid for and may purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in their own absolute right, without further accountability.

Upon default, trustee may take immediate action in certain cases:

SEC. 9. In case the company shall make default in any of the respects mentioned in this article, and at any time during the continuance of such default, there shall be any existing judgment against the company unsatisfied and unsecured by bond on appeal; or in case the company shall make any assignment for the benefit of its creditors; or in case, in any judicial proceeding by any party other than the trustee, a receiver, assignee or trustee in bankruptcy shall be appointed of the company, or a judgment or order entered for the sequestration of its property; or its property shall be seized under any writ of attachment or other legal process, or by any mortgagee or other person having a lien thereon, and it shall not within such time and in such manner as may be permitted by law cause said property to be released and discharged therefrom by giving bond or otherwise, the trustee shall be entitled forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the trustee upon the occurrence and continuance of default as hereinbefore provided, without awaiting said prescribed default period; and, as a matter of right, the trustee shall thereupon be entitled to the appointment of a receiver of the premises hereby mortgaged and pledged, and of the earnings, income, rents, issues and

profits thereof, with such powers as the court making such appointment shall confer.

SEC. 10. The company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for a period of ninety days, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether by the maturity of said bonds, or by declaration as authorized by this indenture, or by a sale as provided in section six of this article, then, upon demand of the trustee, the company will pay to the trustee, for the benefit of the holders of the bonds and coupons hereby secured then outstanding, the whole amount due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of five per centum per annum upon the overdue principal and installments of interest; and in case the company shall fail to pay the same forthwith upon such demand, the trustee, in its own name, and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

Trustee may recover judgment for amount due:

The trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceeding for the enforcement of the lien of this indenture upon the pledged property, and the right of the trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or for the foreclosure of the lien thereof; and, in case of a sale of the pledged property, and of the application of the proceeds of sale to the payment of the debt, the trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the trustee, and no lien of any execution upon property subject to the lien of this indenture, or upon any other property, shall in any manner or to any extent affect the lien of the trustee upon the pledged property or any part thereof, or any rights, powers or remedies of the holders of the bonds hereby secured; but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys thus collected by the trustee under this section shall be applied by the trustee towards payment of the amount then due and unpaid upon such bonds and coupons in respect of which

such moneys shall have been collected, ratably and without preference or priority of any kind, except as provided in Section 1 of this article, according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the trustee for the distribution of such moneys, upon presentation of the several bonds and coupons, and stamping thereon such payment if only partially paid, and upon surrender thereof if fully paid.

Majority of bondholders may enforce or waive certain provisions of mortgage:

SEC. 11. The holders of a majority in amount of the bonds issued and outstanding at any time shall have, and they are hereby given, the absolute right to control the action of said trustee in and about enforcing or waiving any of the provisions of this indenture, with reference to the prompt payment of the interest upon the bonds secured hereby, or the performance of any of the other covenants or conditions herein contained, except the payment of the principal of said bonds at the time they become due. And the holders of a majority in amount of such bonds shall have the right to direct the said trustee to waive any default which may occur in the payment of the interest on the bonds secured hereby, or the performance of any other of the covenants or conditions herein contained, except the payment of the principal of the bonds secured hereby at the time and place provided therein; and the holders of a majority in amount of said bonds shall further have the right to direct the said trustee to discontinue any proceeding which it may have taken to foreclose this mortgage and deed of trust or to enforce in any way the provisions thereof, or to direct the said trustee to restore to the company the property hereby conveyed in the event that said trustee shall have taken possession, or to waive any other act or thing done or omitted to be done by the said company in violation of the terms hereof or of any covenants on the part of the company under this indenture, except the payment of the principal of the bonds secured hereby at the time and place provided therein. Such request of the holders of a majority of the bonds issued and outstanding shall be made in writing, and, upon the same being made in accordance with the provisions hereof, any election or declaration by said trustee declaring the principal of said bonds due and payable, shall forthwith cease and determine and become null and void, and any and all proceedings commenced by the said trustee to foreclose this indenture shall forthwith abate, and the said trustee shall forthwith surrender and deliver back to the said company the property and franchises, if any, which said trustee shall have become possessed of by reason of the default in the performance of the conditions and covenants herein; and any and all acts done or omitted to be done by the said company in violation hereof shall

be waived, and the right to take any action hereunder by reason thereof shall immediately cease and determine.

Trustee entitled to appointment of receiver:

SEC. 12. In the event that said trustee shall commence any appropriate proceedings at law or in equity for the purpose of foreclosing this mortgage or deed of trust, the said trustee shall, as a matter of right, be entitled to the appointment of a receiver of and for all and singular the property hereby conveyed, and by and through said receiver to take possession thereof and operate the same and receive the tolls, rents, incomes, issues and profits thereof.

The company may surrender property to trustee:

SEC. 13. The said company shall have the right at any time, when in the judgment of its board of directors it is deemed needful or expedient so to do, with the consent of the trustee, to surrender the possession of each and all of the properties hereby conveyed to said trustee, and to authorize said trustee to forthwith proceed to dispose of the same in such manner as may be lawful and proper, and apply the proceeds of such disposition to the satisfaction and payment of the principal and interest of the bonds secured hereby and the obligations arising hereunder in the same manner as though there had been a default in the provisions of this indenture.

Waiver of appraisement and redemption laws:

SEC. 14. The company will not at any time insist upon or plead or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force, providing for valuation or appraisement of the mortgaged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to the decree, judgment or order of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right under any statute enacted by any state, or otherwise to redeem the property so sold, or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

Bondholders not entitled to sue except on trustee's refusal:

SEC. 15. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity

or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder shall have previously given to the trustee written notice of such default, and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of a majority in amount of the bonds hereby secured then outstanding shall have made written request upon the trustee, and shall have offered to it a reasonable opportunity either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceedings in its own name; nor unless, also, they or some one or more of them shall have offered to the trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. And such notification, request and offer of indemnity are hereby declared in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture for the benefit of the bondholders, and to any action or cause of action for foreclosure, or for the appointment of a receiver, or for any other remedy hereunder, it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever, by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner hereien provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Remedies in mortgage are cumulative:

SEC. 16. Except as herein expressly provided to the contrary, no remedy herein contained conferred upon or reserved to the trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity, or by statute; but no action at law shall be instituted against the company by any bondholder to enforce the contractual liability of the company by reason of its covenants and promises contained in said bonds, until the property hereby mortgaged shall have been exhausted by pursuit of the remedies herein provided.

Trustee's delay or omission not to effect subsequent default:

SEC. 17. No delay or omission of the trustee or of any holders of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this

article to the trustee or to the bondholders may be exercised from time to time, and as often as may be deemed expedient by the trustee or by the bondholders.

ARTICLE FIVE.

Waiver of stockholders, officers and directors:*

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the company, or of any successor corporation, either directly or through the company, by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any statute or otherwise; it being especially agreed and understood that this mortgage, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, incorporators, stockholders, officers or directors of the company, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liabilities of every name and nature, and any and all rights and claims against every such incorporator, stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of and as a part of the consideration for the execution of this indenture, and of the issuing of the bonds and interest obligations secured hereby.

ARTICLE SIX.

Two-thirds of bondholders may assent to modifications:

Consent of trust company:

SECTION 1. From time to time the holders of two-thirds in amount of all the bonds hereby secured for the time being outstanding, by their votes at a meeting of the bondholders held as provided in section two of this article, or by an instrument or instruments in writing signed by such holders, shall have power, with the written approval of the said Trust Company, as trustee, (1) to assent to and authorize the release of any part of the property mentioned in paragraphs numbered hereof held by the trustee under this indenture; (2) to assent to and authorize any

* See Sec. 34 (1) Stock Corporation Law, N. Y.

modification or compromise of the rights of the bondholders, and of the trustee, against the company, or against any property subject to this indenture, whether such rights shall arise under these presents or otherwise; and (3) to assent to and authorize any modification of the provisions of this indenture that shall be proposed by the company and recommended by the trustee; and any action taken with the assent or authority given as aforesaid, shall be binding upon the holders of all the bonds hereby secured, and upon the trustee, as fully as though such action were specifically and expressly authorized by the terms of this indenture.

Meetings of bondholders:

SEC. 2. Meetings of bondholders may be convened in the City of New York by the trustee, and shall be convened by the trustee on the request in writing of the holders of one-fourth in value of the outstanding bonds, and in the event of the refusal or neglect of the said trustee, for thirty days after such request has been delivered to the trustee, so to convene such meeting or meetings of bondholders, the holders of one-fourth in value of the then outstanding bonds may convene the same, and notice of the time, place and purpose of such meeting or meetings shall be given by six consecutive advertisements in at least one daily newspaper published in the City of New York, State of New York, the last of which advertisements shall not be less than thirty days before the date fixed for said meeting; and subsequent meetings may be called in such manner as may be fixed by regulations prescribed or established by the bondholders at such meeting, and the bondholders may vote at such meetings in person or by proxy; and such regulations or by-laws in respect of such meetings may from time to time be established, altered or repealed by the bondholders acting by two-thirds in value as to them shall seem expedient; and until the bondholders shall make such regulations and by-laws such powers may be exercised by the trustee. And the trustee shall have the right, at or before any meeting of the bondholders, to require that any act or resolution of the bondholders affecting the duties of the trustee, shall be authenticated by the signature of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting. The presence in person or by proxy of the holders of not less than two-thirds in value of the outstanding bonds hereby secured shall be required to constitute a quorum at any meeting of the bondholders.

ARTICLE SEVEN.

Execution of instruments by bondholders:

Any request, direction or other instrument required by this indenture to be signed and executed by bondholders may be any

number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument, or of the writing appointing any such agent, and of the ownership of bonds, if made in the following manner, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the trustee with regard to due action by it taken under such request, .

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who, by the laws thereof, has power to take acknowledgments within said jurisdiction, to the effect that the person signing such writing acknowledged before him the execution thereof or by an affidavit of a witness of such execution.

The fact of the holding of bonds hereunder by any bondholder, and the amount and issue number of any such bonds, and the date of his holding the same may be proved by a certificate executed by any trust company, bank, banker or other depository (wherever situated), if such certificate shall be deemed by the trustee to be satisfactory, showing that at the date therein mentioned such persons had on deposit with such trust company, bank, banker or other depository the bonds described in such certificate.

ARTICLE EIGHT.

Certain property may be released from lien of mortgage on certain conditions:

SECTION 1. If at any time any of the property described in paragraphs numbered , both inclusive, of the granting clause hereof cannot be advantageously used in the proper and judicious operation of the business of the company, or if the sale or disposition thereof has become necessary or advisable for any cause, the same, or any interest therein, may be sold or exchanged for other property, and upon the request of the company, approved by two-thirds of the members of its board of directors, the trustee shall release the same from the lien and effect of this indenture upon the following provisions and conditions:

(a) No plant shall be sold to a business competitor of the company.

(b) No plant shall be sold or exchanged unless the economical and judicious management of the company's business demands that its operation shall be so discontinued, or unless it be proposed to re-establish said plant at some other more convenient or advantageous site. The existence of the facts in this and the preceding clause provided shall be evidenced by a statement to that effect signed by two-thirds of the directors of the company.

(c) Before any such property, or any interest therein, shall be released, the same shall be appraised by an appraiser, or by more than one appraiser, who shall be selected by the trustee, and the certificate of such appraiser or appraisers shall be subject to the inspection of the company. .

(d) In case of any such sale of any property, or of any interest therein, the price or proceeds of sale, not less than the value of such property, or of such interest as appraised by such appraiser or appraisers, or a sum equal to such price or proceeds, shall be deposited with the trustee to be held for the further security of the bonds hereby secured until paid over or applied as hereinafter provided.

(e) In case of any exchange, other property, appraised by an appraiser selected by the trustee to be of value at least equal to the appraised value of the property given in exchange, shall be subject to the lien and operation of this indenture, and shall be forthwith transferred to the trustee for that purpose.

The moneys received by the trustee upon any such sale, and any moneys received by the trustee upon any other disposition of any property subject to this indenture, shall be applied as and when directed by the company as follows:

(1) The trustee shall pay over to the company out of any such proceeds, sums equal to any expenditures that shall be made by the company for the acquisition of additional property, upon subjecting such property to the lien and operation of this indenture; or

(2) At the option of the company, the trustee shall apply such proceeds, or any part thereof, in redeeming bonds hereby secured in the manner provided in Article Three, section one, and the company shall be credited with the amount of said bonds at par, so purchased and redeemed, on its obligation to pay \$ per year to the trustee for the account of the sinking fund. Such bonds so purchased and redeemed shall thereupon be cancelled and delivered to the company.

The company may make replacements:

The certificates and statements referred to and provided for in this section shall be full warrant to the trustee for its action on the faith thereof.

SEC. 2. While in possession of the mortgaged premises the company shall also have full power in its discretion, from time to time, to dispose, free from the lien of this indenture, of any of the property mentioned in paragraphs numbered hereof, and any portion of the implements, machinery, tools, appliances, furniture and fixtures embraced within this indenture, which may have become unfit for use, replacing the same by or substituting for the

same new implements, machinery, tools, appliances, furniture and fixtures, which shall become subject to the first lien of this indenture.

ARTICLE NINE.

The company may retain possession until default:

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured, or some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the company, its successors and assigns, shall be suffered and permitted to retain the actual possession of all the property that may be conveyed and mortgaged to the trustee, and to manage, operate and use the same and every part thereof, with the rights and privileges appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof; and prior to such default, and the continuance thereof, as aforesaid, the company shall have the right in its discretion to bring suits at law or in equity against infringers of any of the patents of the United States hereby mortgaged, and shall have the right and power to join the trustee as party plaintiff or complainant, provided that it shall have first given notice in writing to the trustee of its intention to commence the suit, with specification of the court, the defendants, the patent or patents claimed to be infringed, and the attorneys, solicitors and counsel who are to appear in the suit for the company and the trustee, and compliance with this condition shall be essential and sufficient to authorize the company's attorneys, solicitors and counsel to appear for the trustee in any such suit. The company agrees at any time, and from time to time, to furnish to the trustee any information regarding such suits which the trustee may desire.

Mortgaged property to be released on payment of bonds:

SEC. 2. If, when the bonds hereby secured shall have become due and payable, the company shall well and truly pay, or cause to be paid, the whole amount of the principal, moneys and interest due upon all the bonds and coupons for interest thereon hereby secured, then outstanding, or shall provide for such payment by depositing with the trustee hereunder for the payment of such bonds and coupons, the entire amount then due thereon for principal and interest, and also shall pay or cause to be paid all other sums payable hereunder by the company, and shall well and truly keep and perform all the things herein required to be kept and performed by it, according to the true intent and meaning of this indenture, then

and in that case all the property, rights and interests hereby conveyed or pledged shall revert to the company, and the estate, right, title and interest of the trustee shall thereupon cease, determine and become void; and the trustee in such case, upon demand of the company, and at its cost and expense, shall execute proper instruments acknowledging satisfaction of this indenture, and such deeds of release or conveyance as shall be necessary, proper or requisite to revest in the company the property then subject to this indenture free and discharged from the lien thereof.

ARTICLE TEN.

Acceptance of trust:

General provisions for protection of trustee:

The trustee, for itself and its successors, hereby accepts the trust, and assumes the duties herein created and imposed upon it, but only upon the following terms and conditions, to wit:

(a) The trustee shall be protected in any action taken by it upon any notice, request, consent, certificate, bond or other paper or document believed by it to be genuine, and to have been signed by the proper parties.

(b) The trustee may select and employ, in and about the execution of this trust, suitable agents and attorneys, whose reasonable compensation shall be paid to the trustee by the company, or, in default of such payment, shall be a charge upon the hereby-pledged premises and property, and the proceeds thereof, paramount to said bonds. The trustee shall not be responsible for the recording or filing of this indenture, and the bonds secured hereby may be authenticated and delivered by the trustee prior to any such proceedings. The trustee, save for its gross negligence or wilful default, shall not be personally liable for any loss or damage.

(c) The trustee shall be under no obligation to effect any insurance upon the properties hereby conveyed unless requested so to do and furnished funds for that purpose, and the trustee shall have a first lien upon the pledged property and fund for its reasonable expenses, counsel fees and compensation incurred in and about the execution of the trust hereby created, and the exercise and performance of its powers and duties hereunder.

(d) The trustee shall be under no obligation or duty to perform any act hereunder, or defend any suit in respect hereof, unless requested so to do by one or more holders of the bonds secured hereby and reasonably indemnified. Excepting as herein expressly otherwise provided, the trustee shall not be bound to recognize any person as a bondholder unless and until his bonds are submitted to the trustee for inspection, if required, and his title satisfactorily established, if disputed.

(e) The recital of facts herein and in said bonds contained shall be taken as statements by the company, and shall not be construed as made by the trustee.

(f) The trustee, or any successor or successors hereafter appointed, may resign and be discharged of the trust hereby created by written notice thereof of the company, and by publication at least twice in each week for four successive weeks in a daily newspaper published in the City of New York, and by the due execution of the conveyance herein required.

ARTICLE ELEVEN.

Trustee may be removed:

Successor trustee:

The trustee, or any trustee hereafter appointed, may be removed at any time by an instrument or concurrent instruments in writing, signed by the holders of not less than two-thirds in amount of the bonds hereby secured and then outstanding, and signed also by the company. In case at any time the trustee, or any trustee hereafter appointed, shall resign, or shall be removed, or otherwise shall become incapable of acting, a successor may be appointed by the holders of two-thirds in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments, signed by such bondholders or their attorneys in fact, duly authorized; provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The company shall publish notice of such appointment by it made once in each week for six successive weeks in a daily paper published in the City of New York, State of New York, and any trustee so appointed by the company shall immediately, and without further act, be superseded by a trustee appointed by the bondholders, in the manner above provided, prior to the expiration of one year after such publication of notice. Every such trustee appointed by the bondholders or by the company shall always be a trust company in good standing, if there be such a trust company willing and able to accept the trust, upon reasonable or customary terms

Effect of appointment of successor trustee:

Any new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office, and also to the company, an instrument accepting such appointment hereunder, and thereupon such trustee, without any further act, deed or conveyance, shall be-

come vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein; but the trustee ceasing to act shall, nevertheless, on the written request of the company, or of the new trustee, execute and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so ceasing to act, and shall duly assign, transfer and deliver all properties and moneys held by such trustee to the new trustee. Should any deed, conveyance or instrument in writing from the company be required by any new trustee for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, upon request, be made, executed, acknowledged and delivered by it.

ARTICLE TWELVE.

Covenants bind successors and assigns:

SECTION 1. All the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the company shall bind its successors and assigns, whether so expressed or not. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the term "the company" includes and means not only the party of the first part hereto, but also its successors and assigns.

Definition of certain terms:

SEC. 2. The word "trustee" means the trustee for the time being, whether original or not; the words "trustee," "bond" and "bondholder" shall include the plural as well as the singular number, unless otherwise expressly indicated. The word "coupons" refers to the interest coupons attached to the bonds secured hereby. The word "person" used with reference to a bondholder shall include associations or corporations owning any of said bonds.

Counterpart originals may be executed:

Except when otherwise indicated by the context, bonds purchased or redeemed for the sinking fund shall not be deemed in force, and such bonds shall not be deemed included in the terms "outstanding bonds" or "bonds hereby secured," or similar expressions. In order to facilitate the record of this indenture the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

CONSOLIDATION AND MERGER.

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IN WITNESS WHEREOF, the said parties have caused their respective corporate seals, duly attested, to be affixed to five counterparts hereof, and these presents to be subscribed by their respective presidents the day of , 19 .

Signed, sealed and delivered }
in the presence of }

Company.

By

President.

Attest:

(SEAL)

Secretary.

The

Trust Company.

By

President.

Attest:

(SEAL)

Secretary.

FORM OF AFFIDAVIT TO BE ATTACHED IF MORTGAGE COVERS CHATTELS.

[See Section 186.]

STATE OF
COUNTY OF

} ss.

being duly sworn saith that he is the secretary and treasurer of the Trust Company, the mortgagee above mentioned, and is duly authorized agent in its behalf; that the true consideration of the above mortgage is the issue of dollars in the bonds of the mortgagor, for the purpose specially set forth in the mortgage.

Subscribed and sworn to }
before me, this }
day of , 19 . }

[The above form of affidavit was held to be sufficient in Camden Safe Deposit Co. v. Burlington Carpet Co., 33 Atl. Rep., 479.]

AGREEMENT OF CONSOLIDATION AND MERGER.

Form 422.

[Sections 104-9.]

AN AGREEMENT made the day of , in the year 19 , between the COMPANY, a corporation of the State of New Jersey, by its directors, and the COMPANY, a corporation of the said State of New Jersey, by its directors.

WHEREAS, the principal and registered office of each of the said corporations in the State of New Jersey is at No. Street,

and is the agent therein, in charge thereof, and upon whom process against each of said corporations may be served; and

WHEREAS, the said corporations were organized pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," for the purpose of carrying on business of the same [or, a similar] nature, namely, the manufacture and sale of , and the products thereof, and other like articles; and

WHEREAS, the respective boards of directors of the said corporations deem it advisable for the purpose of greater efficiency and economy of management, and in order to obtain a more extended margin for the products of the said corporations, as well as for the general welfare of the said corporations, to merge and consolidate them under and pursuant to the provisions of the said act entitled "An Act Concerning Corporations (Revision of 1896)";

Now, THEREFORE, in consideration of the premises and of the mutual agreements, covenants, provisions and grants herein contained, it is hereby agreed by and between the said parties hereto as follows:

ARTICLE I.

The said Company and the said Company are hereby consolidated into a single corporation under the name of COMPANY, said Company being merged into the said hereinafter called "the consolidated corporation."

ARTICLE II.

The corporate name, franchises, rights, immunities and organization of the said Company shall remain intact; the corporate name and organization of the said Company, except so far as the same are continued by statute, shall cease upon the filing of this agreement in the office of the secretary of state of the State of New Jersey.

ARTICLE III.

The said consolidated corporation, in addition to the powers conferred by statute, shall have the powers granted by, and shall be subject to and be governed by the amended certificate of incorporation of the said Company, filed in the office of the Secretary of State of the State of New Jersey, on the day of , 19 .

ARTICLE IV.

The by-laws of the said consolidated corporation shall be the present by-laws of the said Company until changed or amended, as provided therein,

ARTICLE V.

The board of directors of the said consolidated corporation shall be _____ in number, and the names and places of residence of the first directors and officers thereof, who shall hold office until their successors are chosen or appointed as provided by the by-laws of the said corporation, are as follows:

NAMES.

RESIDENCES.

ARTICLE VI.

The capital stock of the consolidated corporation is _____ dollars (\$) _____, divided into _____ shares of the par value of _____ dollars (\$) _____) each, consisting of _____ shares of common stock and _____ shares of preferred stock.

The rights of the holders of the said common stock and preferred stock respectively shall be as set forth in said amended certificate of incorporation of the said _____ Company.

ARTICLE VII.

The said corporations are merged and consolidated upon the understanding and agreement that the present indebtedness of each of the said corporations shall be assumed in full by the consolidated corporation.

ARTICLE VIII.

All property, real, personal and mixed, of the said corporations parties hereto, shall vest in the said consolidated corporation immediately upon the adoption of this agreement by the stockholders of the said corporations, and the said _____ Company shall execute and do all assignments, assurances in the law, and things necessary to vest the title to such property in the said consolidated corporation, and otherwise to carry out the purposes of this agreement.

ARTICLE IX.

The shares of stock of the said consolidated corporation shall be apportioned among and issued to the stockholders of the corporations parties hereto according to the shares held by the respective stockholders of said corporations as the same appear on the books of the respective corporations, that is to say, the stockholders of the said _____ Company shall retain the shares to which they are now entitled in the said company, and each of the stockholders of the said _____ Company shall be entitled to one share of common stock of the said consolidated corporation for each share of common stock of said _____

Company now held by him, and to one share of the pre-

ferred stock of said consolidated corporation for each share of preferred stock of the said Company now held by him. The holders of said shares shall, however, be liable to pay to the said consolidated corporation any and all amounts unpaid on their said shares as and when called for by the directors of the said consolidated corporation.

ARTICLE X.

Any stockholder of the said Company, upon presenting to the transfer agent at said registered office his certificate of stock and surrendering the same to be cancelled, shall be entitled to receive a certificate for the proper number of shares of the capital stock of the said consolidated corporation, pursuant to Article IX of this agreement, and to be registered as a stockholder of said consolidated corporation.

ARTICLE XI.

The consolidated corporation shall pay all expenses of consolidation and all preliminary expenses, including legal expenses.

ARTICLE XII.

The principal and registered office of said consolidated corporation in the State of New Jersey is at No. Street, , and is the agent therein in charge thereof, upon whom process against the company may be served.

IN WITNESS WHEREOF, the said parties to this agreement have, in pursuance of a resolution passed by the board of directors of each of the said corporations at a special meeting of the board of directors of each Company called for the purpose, caused the respective corporate seals of each of the said companies to be hereto affixed, and these presents to be signed by their respective presidents, and attested by their respective secretaries, all duly authorized thereto, the day and year first above written.

For the

COMPANY,

[CORPORATE SEAL]

President.

Attest:

Secretary.

For the

COMPANY,

[CORPORATE SEAL]

President.

Attest:

Secretary.

FORM OF CERTIFICATE TO BE MADE BY THE SECRETARY OF EACH COMPANY
AND APPENDED.

STATE OF NEW JERSEY, }
COUNTY OF } SS.

I, _____, secretary of the
_____, COMPANY, a corporation organized and doing business pursuant to an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," DO HEREBY CERTIFY in accordance with the provisions of Section 105 of said act:

1. That the foregoing agreement for the merger and consolidation of said corporation and the _____ Company was made by the directors of said _____ Company at a duly convened meeting called for the purpose.

2. That the said agreement was submitted to the stockholders of said _____ Company at a meeting thereof, called for the purpose of taking the same into consideration, of which meeting twenty days' notice of the time, place and object thereof was mailed to the last known postoffice address of each of said stockholders.

3. That the said agreement was considered by the stockholders at said meeting, and a vote of the stockholders was taken by ballot for the adoption or rejection of said agreement, and that stockholders owning more than two-thirds of the shares of the capital stock of said _____ Company voted in favor of the adoption of said agreement.

4. That the meeting of stockholders of the _____ Company and the said vote by ballot upon the adoption of said agreement were held and taken separately from the meeting of stockholders and vote of the said _____ Company.

5. That the principal office of said _____ Company in the State of New Jersey is at No. _____ Street, _____, and _____ is the agent therein and in charge thereof, upon whom process against the Company may be served.

IN WITNESS WHEREOF, I have hereunto signed my name as secretary and affixed the seal of the said _____ Company this _____ day of _____, 19 .

Secretary.

[CORPORATE SEAL.]

VOLUNTARY DISSOLUTION.

VOLUNTARY DISSOLUTION.

Form 423.

[Sections 32, 43a.]

CERTIFICATE OF THE SURRENDER OF CORPORATE
FRANCHISES.

The location of the principal office in this state is at No.
street, in the of
County of .

The name of the agent therein and in charge thereof, upon
whom process against this corporation may be served, is .

We, the subscribers, being all incorporators named in the cer-
tificate of incorporation of the Company, a cor-
poration of New Jersey, do hereby certify that no part of the
capital of said corporation has been paid, and the business for
which the corporation was created has not been begun.

And we do hereby surrender all our corporate rights and fran-
chises which we have obtained by the creation of said corporation,
to the end that said corporation may be forthwith dissolved.

Witness our hands and seals this day of
A. D. 19 .

[L. s.]

[L. s.]

[L. s.]

STATE OF }
COUNTY OF } ss.

being severally duly sworn, on their oaths say that the facts stated
and certified in the foregoing certificate are true.

Subscribed and sworn to before me }
this day of , }
A. D. 19 .

Form 424.

[Sections, 31, 43a.]

CERTIFICATE OF DISSOLUTION BY UNANIMOUS CONSENT
OF ALL STOCKHOLDERS

of the Company
The location of the principal office in this state is at No.
street, in the of , County
of .

VOLUNTARY DISSOLUTION.

697

The name of the agent therein and charge thereof, upon whom process against this corporation may be served, is .

We, the subscribers, being all of the stockholders of the _____ Company, a corporation of the State of New Jersey, deeming it advisable and most for the benefit of said corporation that the same should be forthwith dissolved, do hereby give our consent to the dissolution thereof, as provided by "An Act Concerning Corporations (Revision of 1896)," and do sign this consent, to the end that it may be filed in the office of the secretary of state of the State of New Jersey.

Witness our hands this _____ day of _____, A. D. 19 .

STATE OF _____ } ss.
COUNTY OF _____

_____, the secretary of the above-named Company, being duly sworn, on his oath says that the foregoing consent to the dissolution of said corporation has been signed by every stockholder of this company.

Subscribed and sworn to before me }
this _____ day of }
A. D. 19 . }

[Add list of directors and officers at time of dissolution; see Form 428, p. 701, post.]

Form 425.

AFFIDAVIT OF PUBLICATION.

[Sections 31, 43a.]

The location of the principal office in this state is at No. _____ street, in the _____ of _____, County of _____.

The name of the agent therein and in charge thereof, upon whom process against the corporation may be served, is .

STATE OF _____ } ss.
COUNTY OF _____

_____, the secretary of the _____ Company, being duly sworn, and on his oath says, that the board of directors of the said company have caused the certificate of dissolution of the _____ Company, a copy whereof is hereto annexed, issued by the secretary of state of the State of New Jersey, dated the _____ day of _____, 19 , to be published in the _____, a newspaper published at the City of _____ and

circulated in the County of _____, being the county in which said company has been located and conducting its business, for the period of four weeks successively, at least once in each week, commencing on the _____ day of _____, 19____, as required by section thirty-one of an act entitled "An Act Concerning Corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six.

Sworn and subscribed before me, the _____ }
day of _____, A. D. 19____. }

STATE OF NEW JERSEY, }
COUNTY OF _____ } ss.

_____, of lawful age, being duly sworn according to law, doth depose and say, that he is _____ of _____, a newspaper printed and published in the City of _____ and County of _____ and State of New Jersey, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, once in each week, for the period of four weeks, commencing on the _____ day of _____, 19____.

Sworn and subscribed before me, {
the _____ day of _____, 19____. }
[Annex copy of notice as published.]

Form 426.

[Sections 31, 43a.]

CERTIFICATE OF DISSOLUTION ISSUED BY SECRETARY OF STATE.

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

CERTIFICATE OF DISSOLUTION.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, it appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolution thereof by the unanimous consent of all the stockholders, deposited in my office, that the _____ Company, a corporation of this state, whose principal office is situated at No. _____ street, in the _____ of _____, County of _____, State of New Jersey (_____ being the agent therein and in charge thereof upon whom process may be

served), has complied with the requirements of "An Act Concerning Corporations (Revision of 1896)," preliminary to the issuing of this

CERTIFICATE OF DISSOLUTION.

Now, THEREFORE, I, _____, Secretary of State of the State of New Jersey, do hereby certify that the said corporation did on the _____ day of _____, 19____, file in my office a duly executed and attested consent in writing to the dissolution of said corporation executed by all the stockholders thereof, which said consent, and the record of the proceedings aforesaid, are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal at Trenton, this _____ day of _____, A. D. 19____.
[L. S.] _____ Secretary of State.

Form 427.

[Sections 31, 43a.]

**CERTIFICATE OF DISSOLUTION BY VOTE OF DIRECTORS AND
CONSENT OF STOCKHOLDERS (NOT UNANIMOUS).**

The location of the principal office in this state is at No. _____ street, in the _____ of _____, County of _____.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is _____.

We, the undersigned, being a majority of the board of directors of the _____ Company, DO HEREBY CERTIFY that at a meeting of the said board, called for that purpose, and held on the _____ day of _____, A. D. 19____, said board, by a majority of the whole board, did adopt the following resolution:

RESOLVED, that in the judgment of this board, it is advisable and most for the benefit of the _____ Company that the same should be forthwith dissolved; and to that end it is ordered that a meeting of the stockholders be held on _____, the _____ day of _____, A. D. 19____, at _____ M., at the office of the company, in the City of _____, to take action upon this resolution; and, further, that the secretary forthwith give notice of said meeting, and of the adoption of this resolution, within ten days from this date, by publishing the said resolution, with a notice of its adoption, in the _____, a newspaper published in the City of _____, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States.

[L. S.]

Secretary.

WHEREAS, on the day of , A. D. 19 , the
directors of the Company, by a majority vote of
the whole board, at a meeting called for that purpose, of which
meeting every director received at least three days' notice, did
adopt a resolution in the words or to the effect following, to wit:

NOW, THEREFORE, we, the subscribers, being more than two-thirds in interest of all the stockholders, assembled in pursuance of said resolution and notice, have consented, and do hereby consent, that the said company be forthwith dissolved as proposed in said resolution.

Secretary.

being duly sworn, on his oath says,

 Company,
 _____,
 interest of the stockholders of said

company, at a meeting duly called for the purpose as above recited, sign the foregoing certificate of consent as their voluntary act and deed, and that deponent at the same time subscribed the same as attesting witness; and deponent further says that on the day of , A. D. 19 , he mailed a printed copy of the resolution above recited, with a notice of the adoption thereof, to each and every stockholder of said company, residing in the United States, and also caused the same to be duly published as required by the said resolution; and deponent further says, that the said resolution of the board of directors was duly adopted upon lawful notice as in the certificate above recited.

Sworn and subscribed before me }
 this day of }
 , A. D. 19 .

AFFIDAVIT OF PUBLICATION.

STATE OF NEW JERSEY, }
 COUNTY OF } ss.

 of lawful age being duly sworn according to law, doth depose and say, that he is of , a newspaper printed and published in the City of and County of and State of New Jersey, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, once in each week, for the period of four weeks, commencing on the day of , 19

Sworn and subscribed before me }
 the • day of }
 , A. D. 19 .

[Attach copy of advertisement.]

Form 428.

[Sections 31, 43a.]

LIST OF DIRECTORS AND OFFICERS AT TIME OF DISSOLUTION.

As required by "An Act Concerning Corporations (Revision of 1896)," the board of directors of The Company render the following statement to be filed in the office of the Secretary of State of the State of New Jersey, upon the dissolution of said company.

The location of the principal office in this state is at No. street, in the of , County of .

VOLUNTARY DISSOLUTION.

The name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is .

The following is a list of the names and residences of the directors and officers of said company.

NAMES.

RESIDENCES.

The officers of the company are:

President,
Vice-President,
2d Vice-President,
3d Vice-President,
Secretary,
Treasurer,

Dated , 19 .

The foregoing statement is correct and true.

President.

Attest:

Secretary.

Form 429.

[Sections 31, 43a.]

**CERTIFICATE OF FILING OF CONSENT TO DISSOLUTION
ISSUED BY SECRETARY OF STATE.**

STATE OF NEW JERSEY,

DEPARTMENT OF STATE.

**CERTIFICATE OF FILING OF CONSENT BY STOCKHOLDERS
TO DISSOLUTION.**

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, it appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolution thereof deposited in my office, that the Company, a corporation of New Jersey, whose principal office is situated at No. street, in the of , County of , State of New Jersey (being the agent therein and in charge thereof upon whom process may be served), has complied with the requirements of "An Act Concerning Corporations (Revision of 1896)," preliminary to the issuing of this certificate that such consent has been filed:

Now, THEREFORE, I, , Secretary of State of the State of New Jersey, do hereby certify that the said corporation did on the day of , 19 , file in my office a duly executed and

attested consent in writing to the dissolution of said corporation executed by more than two-thirds in interest of the stockholders thereof, which said certificate, and the record of the proceedings aforesaid, are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal at Trenton, this day of , A. D. 19 .

[SEAL.]

Secretary of State.

FOREIGN CORPORATIONS.

Form 430.

[Section 97.]

STATEMENT BY A FOREIGN CORPORATION TRANSACTING BUSINESS IN THE STATE OF NEW JERSEY.

The Company, a corporation foreign to the State of New Jersey and organized under the laws of the State of , does hereby, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," make the following statement and designation:

FIRST.—That the total amount of the capital stock said company is authorized to issue is \$, and the amount actually issued is \$.

SECOND.—That the character of the business which the said company is to transact in the State of New Jersey is and as provided in its certificate of incorporation, a copy of which, attested by its president and secretary under its corporate seal, is hereto affixed as part hereof.

THIRD.—That the principal office in New Jersey of the undersigned corporation is the office of the Trust Company, located at No. street, , New Jersey, and the aforesaid trust company, a corporation under the laws of New Jersey, is hereby designated as the agent therein in charge thereof, and upon whom process against this corporation may be served.

IN TESTIMONY WHEREOF, the said corporation hath caused its corporate seal to be hereto affixed, and these presents to [L. S.] be signed by its president and attested by its secretary, the day of , A. D. 19 .

The Company.
By President.

Attest:

Secretary.

[Attach statement of directors, officers, &c., Form 409, p. 617, ante. Then annex copy of charter or certificate of incorporation.]

The undersigned, president and secretary, respectively, of the _____ Company,
DO HEREBY CERTIFY, that the annexed is a true and correct copy of the certificate of incorporation of the aforesaid company and the whole thereof.

IN ATTESTATION WHEREOF, we have affixed our hands and the corporate seal of the company, this _____ day of _____, 19 ____.

[SEAL.]

President.
Secretary.

Form 431.

[Section 99.]

CERTIFICATE OF SUBSTITUTION OF AGENT OF A FOREIGN CORPORATION.

The _____ Company,
a corporation organized under the laws of the State of _____,
does hereby revoke, cancel and annul the appointment of (*name of present agent*) as its agent, upon whom process may be served, said appointment having been made heretofore and filed in the office of the Secretary of State of the State of New Jersey, under the seal of the aforesaid company by its president and attested by its secretary under and in pursuance of the statutes of the State of New Jersey, and in substitution of the aforesaid designation so filed with the Secretary of State of the State of New Jersey the company above named does hereby make, designate and appoint the

Trust Company, a corporation organized under the laws of New Jersey, with an office at No. _____ street, _____, New Jersey, which is the principal office of the company, as the agent of said company therein and in charge thereof, upon whom process against said company may be served.

IN ATTESTATION WHEREOF, said corporation has caused this certificate to be signed by its president and secretary,
{ Corporate } and its corporate seal to be hereto affixed, the
{ Seal. } day of _____, A. D. 19 ____.

For the Company.

President.

Attest:

Secretary.

PATENTS.

As many companies are formed for the purpose of acquiring patents or interests therein, it has been thought fit to insert here some of the common forms of assignment and grant. A corporation cannot apply for a patent in its own name, and, therefore, it must take title by assignment, either before or after issue of the letters patent.

Assignments and grants must be recorded in the Patent Office within three months from the date thereof, otherwise they are void as against subsequent bona fide purchasers or mortgagees.

Such instruments should also be acknowledged.

Form 432.

**ASSIGNMENT OF AN ENTIRE INTEREST IN AN INVENTION
BEFORE THE ISSUE OF LETTERS PATENT.**

WHEREAS, I, _____ of _____, County of _____, and State of _____, have invented a certain new and useful improvement in _____ for which I am about to make application for letters patent of the United States; and whereas the _____ Company, a corporation of the State of New Jersey, is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of _____ dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said _____, have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said company, the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the _____ day of _____, 19____, preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said _____ Company, as the assignee of my entire right, title and interest in and to the same, for the sole use and behoof of the said company, its successors and assigns.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal this _____ day of _____, 19____.

In presence of:

[L. S.]

[ADD ACKNOWLEDGMENT.]

Form 433.

ASSIGNMENT OF THE ENTIRE INTEREST IN LETTERS
PATENT.

WHEREAS, I, _____, of _____, County of _____, State of _____, did obtain letters patent of the United States for an improvement in _____, which letters patent are numbered _____, and bear date the _____ day of _____, in the year 19 ____; and whereas I am now the sole owner of said patent and of all rights under the same; and whereas the _____ Company, a corporation of the State of New Jersey, is desirous of acquiring the entire interest in the same:

Now, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that for and in consideration of the sum of _____ dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said _____, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said _____ Company the whole right, title and interest in and to the said improvement in _____, and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said company for its own use and behoof, and for the use and behoof of its successors and assigns, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal at _____, in the County of _____, and State of _____, this _____ day of _____, 19 ____.

In presence of:

[L. s.]

[ADD ACKNOWLEDGMENT.]

Form 434.

ASSIGNMENT OF AN UNDIVIDED INTEREST IN LETTERS
PATENT.

WHEREAS, I, _____, of _____, County of _____, State of _____, did obtain letters patent of the United States for an improvement in _____, which letters patent are numbered _____, and bear date the _____ day of _____, in the year 19 ____; and whereas the _____ Company, a corporation of the State of New Jersey, is desirous of acquiring an interest in the same:

Now, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that

for and in consideration of the sum of _____ dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said _____, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said _____ Company the undivided one-half part of the whole right, title and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said Company, for its own use and behoof, and for the use and behoof of its successors and assigns to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal at _____, in the County of _____, and State of _____, this _____ day of _____, 19 ____.

In presence of:

[L. S.]

[ADD ACKNOWLEDGMENT.]

Form 435.

ASSIGNMENT OF TERRITORIAL INTEREST AFTER GRANT OF PATENT.

WHEREAS, I, _____, of _____, County of _____, State of _____, did obtain letters patent of the United States for an improvement in _____, which letters patent are numbered _____, and bear date the _____ day of _____, in the year 19 ____; and whereas I am now the sole owner of the said patent and of all rights under the same in the below-recited territory; and whereas the

_____ Company, a corporation of the State of New Jersey, is desirous of acquiring an interest in the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, be it known that for and in consideration of the sum of _____ dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said _____, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said _____ Company, all the right, title and interest in and to the said invention as secured to me by said letters patent, for, to, and in the State of _____, and for, to, or in no other place or places; the same to be held and enjoyed by the said _____ Company within and throughout the above-specified territory, but not elsewhere, for its own use and behoof, and for the use and behoof of its successors and assigns, to the full end of the term for which

LICENSE UNDER PATENT.

said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal at _____, in the County of _____, and State of _____, this _____ day of _____, 19 ____.

In presence of:

[L. S.]

[ADD ACKNOWLEDGMENT.]

Form 436.

LICENSE—SHOP-RIGHT.

In consideration of the sum of _____ dollars, to me paid by the _____ Company, a corporation of the State of New Jersey, I do hereby license and empower the said Company to manufacture in said _____ (or other place agreed upon), the improvement in _____, for which letters patent of the United States No. _____ were granted to me the _____ day of _____ in the year 19 ____, and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at _____ in the County of _____, and State of _____, this _____ day of _____, 19 ____.

In presence of:

[L. S.]

[ADD ACKNOWLEDGMENT.]

Form 437.

LICENSE—NOT EXCLUSIVE—WITH ROYALTY.

THIS AGREEMENT, made this _____ day of _____, 19 ____, between _____, of _____, in the County of _____, and State of _____, party of the first part, and the _____ Company, a corporation of the State of New Jersey, party of the second part, witnesseth, that whereas letters patent of the United States No. _____, for an improvement in _____, were granted to the party of the first part on the _____ day of _____, 19 ____, and whereas the party of the second part is desirous of manufacturing

containing said patented improvement: Now, THEREFORE, the parties hereto have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture , subject to the conditions hereinafter named, at its factory in , and in no other place or places, to the end of the term for which said letters patent were granted, containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first day of and in each year, of all containing the patented improvements manufactured by it.

III. The party of the second part agrees to pay to the party of the first part dollars as a license fee upon every manufactured by said party of the second part containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semi-annual returns, or within days thereafter, a discount of per cent. shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided, for days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

IN WITNESS WHEREOF the party of the first part has hereunto set his hand, and the party of the second part has caused this instrument to be signed in its behalf by its president, and its corporate seal to be hereunto affixed and attested by its secretary, the day and year first above written at , in the County of , and State of .

In the presence of:

[L. S.]

[ADD ACKNOWLEDGMENTS.]

SCHEDULE OF FEES AND TAXES

FEES OF SECRETARY OF STATE.

Domestic Corporations.

Amended certificates of incorporation (other than those authorizing increase of capital stock)	\$20 00
Annual report of directors, officers, etc.	1 00
Certificate of change of location of principal office, under §28a	5 00
§27	20 00
name	20 00
nature of business	20 00
decrease of capital stock	20 00
par value of shares	20 00
dissolution	20 00

Certificate of extension or renewal of corporate existence:

The same fee as required for original certificates of incorporation (q.v.). The secretary of state has ruled that this fee must be upon the amount of stock which the company is authorized to issue at the time of filing the certificate of extension, not on the amount named in the original certificate of incorporation.

incorporation:

Where total authorized capital stock is \$125,000 or less	25 00
If total authorized capital stock exceeds \$125,000, for each additional \$1,000	20

increase of capital stock:

If amount of increased stock authorized is \$100,000 or less	20 00
For each additional \$1,000 of increased stock	20
increase of par value of shares	20 00
payment of capital stock	5 00
Certificates not expressly provided for	5 00
Certifying copy of certificate of incorporation or other paper	1 00

Consolidation and merger of corporations:

For each \$1,000 of capital stock authorized beyond the total authorized capital of the corporations merged or consolidated, twenty cents, but in no case less than . . . \$20 00

Foreign Corporations.

Filing copy charter and statement and issuing certificate of authority to transact business 10 00

Note.—This fee applies only to corporations created under laws of states which do not exact a larger fee than \$10.00 from a New Jersey corporation carrying on business therein. See Section 101, p. 223, ante. Corporations of states exacting a larger fee or tax are required to pay the same amount for the privilege of carrying on business in New Jersey as a New Jersey corporation would have to pay in such states.

Filing annual report of directors, &c. 1 00

FEES OF COUNTY CLERK.

For recording original or amended certificate of incorporation according to length, about 3 50

FRANCHISE TAXES.

See p. 263, ante.

Index to Forms and Precedents

[Numbers refer to pages.]

Acknowledgment

- authentication of, by county clerk, 45.
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